HOUSE OF REPRESENTATIVES—*Thursday, September 17, 1987*

The House met at 10 a.m.

The Reverend Charles Mallon, permanent deacon, Holy Family Church, Mitchellville, MD, offered the following prayer:

May God be gracious to us and bless us and make His face to shine upon us, that Thy way may be known upon Earth, Thy saving power among all nations.—Psalm 67:1-3.

Father, in thankfulness for the opportunity to serve the people of this Nation, we turn to You in prayer. We ask You to bless our labors and to allow the fruits of these labors to yield a rich blessing. Guide us, that we might direct the bounty of this Nation to the benefit of our youth, our elderly, our poor, and our seriously ill. We ask You to be our strength in the peacekeeping efforts to balance the struggle for nuclear and technical supremacy.

Father, in Your mercy, forgive us any misuse of the resources which You have placed within us and in Your justice restore and make whole all who might have suffered as a consequence of our actions.

We ask this through Christ our Lord. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PERSONAL EXPLANATION

Mr. SCHULZE. Mr. Speaker, I was informed this morning that my vote yesterday was recorded as being opposed to the textile bill.

I have to assume a malfunction in the computer caused this error, but I am aware of the fact that we cannot change the computer tally, so I ask that the RECORD reflect my support for that legislation.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair would like to announce that it is the intention of the Chair to forgo 1-minute speeches today until disposal of today's business.

CIVIL LIBERTIES ACT OF 1987

Mr. BONIOR of Michigan. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 263 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 263

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 442) to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and said substitute shall be considered as having been read. The amendments printed in the report of the Committee on Rules accompanying this resolution shall be considered as having been adopted in the House and in the Committee of the Whole. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Michigan [Mr. BONIOR] is recognized for 1 hour.

Mr. BONIOR of Michigan. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR] pending which I yield myself such time as I may consume.

Mr. Speaker, the consideration of House Resolution 442, the Civil Liberties Act of 1987, implementing the recommendations of the Commission on Wartime Relocation and Internment of Civilians, will be before the Members shortly.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Judiciary Committee. The rule also makes in order the consideration of the Judiciary Committee amendment in the nature of a substitute now printed in the bill as an original bill for the purpose of amendment.

The rule is an open rule allowing for the consideration of germane amendments. The rule also provides that the bill need not be amended in order, by title and by section.

The rule also provides that the amendments printed in the report of the Rules Committee accompanying House Resolution 263, shall be considered as having been adopted in the House and in the Committee of the Whole. There are six technical amendments in the Rules Committee report and all the amendments have been agreed upon by all the committee chairmen involved in this legislation.

Finally, the rule allows for one motion to recommit with or without instructions.

Mr. Speaker, the Civil Liberties Act of 1987 acknowledges the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II. It apologizes on behalf of the people of the United States for the actions taken and provides for an education fund that would finance efforts to inform the public about the internment in order to prevent the recurrence of any similar event. Importantly, the act makes restitution to those individuals of Japanese ancestry who were interned and, furthermore, discourages the occurrence of similar injustices and violations of civil liberties in the future.

□ 1010

Enactment of this legislation would provide more credibility and sincerity to all declarations of concern by the United States over violations of human rights committed by other nations.

This day, September 17, 1987, is significant for we celebrate today the 200th anniversary of the signing of the U.S. Constitution.

We also have the historic opportunity to make amends for one of the ugliest episodes in our Nation's past.

Mr. Speaker, over 40 years ago, 120,000 people of Japanese-American ancestry were forced to give up their livelihoods, their jobs, their belongings, and their homes, and were moved to so-called "relocation" centers in the western United States for the duration of World War II. This action flagrantly disregarded the civil liberties of loyal Americans, young and old, wealthy and poor.

What is more shameful is that the action was based largely on racial prejudice and wartime hysteria.

Many Americans would rather forget the torment of those thousands of people who were incarcerated, but forgetting is not the answer. To forget, I think, is to fail once again. What we must do is admit our errors, work to correct them, and ensure they are never allowed to happen again.

This bill accomplishes these worthy goals.

The House of Representatives has two distinguished Members who were interned in the camps as young children. My good friends from California, Representatives NORM MINETA and BOB MATSUI, both still carry the pain and the anguish that resulted from forced relocation.

Imagine, if you can, a young boy, an American citizen, thrown into an isolated camp, forced from his home and his friends, separated from all but a few who could care for him.

In 1942, criminals had the right to a trial, the right of appeal, but these 120,000 individuals were not given a trial. They had no right of appeal. In fact, they were not even told what they had done to cause their isolation. They were only told that their ancestry made them noncitizens.

What sense of justice were we hoping to teach our children by this fact? How did the interned parents explain to their children the purpose of the Constitution and what it was supposed to stand for?

Since World War II, our Nation, to its credit, has made great strides to guarantee the civil rights of all Americans. The Civil Liberties Act of 1987 is another step toward redressing the injustices against those who were interned. Those 120,000 people suffered economically, socially, educationally, and especially emotionally. We have, it seems to me, a moral responsibility to compensate the internees as best we can for their hardships and to reaffirm our commitment to justice under the law.

Mr. Speaker, let us make September 17, 1987, historic not only for its significance as the 200th anniversary of the signing of our Constitution, but also let it be historic as the day that we righted a terrible wrong and embraced wholeheartedly our dedication to protecting civil liberties for all Americans.

Mr. Speaker, last night in reading several articles about what happened during this period of the war to American citizens, I ran across an article done by a woman named Susan Faludi. I would like to quote one paragraph, and end by quoting one paragraph. In it she says:

A hallucinatory quality clings to the story of the internments of the Japanese-Americans, as if the events themselves make sense only when perceived as imaginary. There is too much dissonance, too many contradictory chords resisting reconciliation. There are the contradictions of stripping civil liberties from people—two-thirds of them U.S. citizens—as a way of safeguarding American freedoms. There are the contradictions of incarcerating an entire race while fighting a war against a nation incarcerating an entire race. When the Jews were freed from Dachau, it was the Japanese-American 442nd Regiment, the most decorated U.S. Army regiment in World War II, that threw open the gates—while their relatives waited for them at home behind barbed wire.

Mr. Speaker, this is a very good and very long overdue bill and I urge my colleagues to support the rule and eventually to support the bill that follows.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 263 is an open rule under which the House will consider authorizing $20,000 in tax-free restitution payments to approximately 60,000 people of Japanese ancestry who were relocated or interned by the Federal Government during World War II.

The bill made in order by this rule, H.R. 442, admits that President Franklin Roosevelt's administration—the Government at that time—fundamentally violated the basic civil liberties and constitutional rights of citizens of Japanese ancestry when it evacuated, relocated, and interned them on the basis of their ancestry.

Mr. Speaker, the bill contains a statement of the Congress recognizing that this was a grave injustice. It also contains a congressional apology on behalf of the Nation.

The bill does not include, however, any findings about the history leading up to the relocation and internment of civilians. This is major flaw, it seems to me.

If the 100th Congress is going to apologize for Government actions taken legally over 40 years ago, it seems to me, we ought to have some examination of why it happened.

For several years now, the gentleman from California [Mr. LUNGREN] has pressed the point that the Government decisions made in the weeks following the Japanese attack on Pearl Harbor were caused by race prejudice, war hysteria, and a failure of political leadership.

Mr. Speaker, since this an open rule, the gentleman from California will be able to offer his amendment to bring the bill into conformity with the findings of the Commission on Wartime Relocation and Internment of Civilians concerning the historical factors.

The bill advances a theory that, after 40 years, a formal apology is not enough and that American taxpayers should make financial payments to individuals on a wholesale basis.

Mr. Speaker, the United States has long ago recognized and acknowledged that the personal hardships experienced by people who were interned were unjustified, both Americans and Japanese.

In 1948, when the history of this period was still fresh, Congress established a comprehensive and reasonable program for financial restitution. Further payments, especially in the broad fashion of the bill, are simply not warranted.

Mr. Speaker, the gentleman from California [Mr. LUNGREN] will be allowed under this rule to offer his amendment striking the authorization for $20,000 payments to individuals.

I have some requests for time, and I reserve the balance of my time.

Mr. BONIOR of Michigan. Mr. Speaker, I have no more requests for time.

Mr. TAYLOR. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. SHUMWAY].

Mr. SHUMWAY. Mr. Speaker, I think there can be no doubt about the fact that a very grave and severe injustice was done to American citizens of Japanese descent during the early years of World War II. I think for that reason it is very appropriate that we consider some of the causes of that injustice and that we try to address those questions in a way that might somehow try to make amends for what was done and perhaps of more significance, assure that it will not be done again in the future; so I think that the apology portion of this bill is very much in order and I certainly support it.

I believe an apology is due. At the same time, I believe that apology should be very profound and it should be lasting in its nature. I do not think it is going to be memorialized in that sense by the simple payment of $20,000 to each internee during World War II.

I felt it would be more appropriate to symbolize this apology on a grander scale and on a continuing basis perhaps by the construction of a monument or the setting up of a trust fund for scholarships or a study of civil rights, so that we could keep the memory of what happened in World War II before us and remain faithful to our pledge to learn from the past and to not permit that kind of injustice to occur again.

□ 1025

So I prepared two amendments, one which would establish a scholarship fund, and the other which would direct the Park Service to erect an appropriate monument. The Parliamentarian decided that those amendments would not be germane.

I, therefore, went to the Rules Committee and asked for a waiver of that particular objection so that I could offer them on the floor today. Because the amendments were not considered

in the Judiciary Committee, the waiver was not granted.

I do not intend to pursue the matter on the floor today. Since I did send out a "Dear Colleague" letter announcing that I intended to offer three amendments, and two will not be offered now, I simply wanted to take this opportunity to explain to Members the reason why.

It seems to me that the amendment dealing with the education trust fund, particularly setting up scholarships for the study of human rights and the promotion of the kind of knowledge, would indeed be germane. The bill does call for a civil liberties public education fund, and one of the purposes of it is to prevent similar kinds of events in the future. Setting up a scholarship fund, I think, would certainly carry out that purpose and could be conducted with the same funds, and it seems to me a very appropriate and even germane amendment to offer.

Particularly I am concerned about the fact that the bill authorizes $1,250,000,000 primarily for the purpose of giving redress, but of that sum only $50 million is allocated to the fund which would provide education in the direction that I have indicated. It seems to me that if indeed our purpose is to prevent this from happening again and to keep the memorial of it before us we should have such a study, and it should be funded in a much larger amount than the bill provides for.

So, Mr. Speaker, I simply want to say that I am sorry that my amendments are not germane today. I will not offer them. But I do think as we consider this subject further in the debate today and as we pursue it in the months and years ahead that perhaps we might keep in mind that there are better solutions than the simple paying of money damages to those who are claiming that their civil rights were violated.

Mr. BONIOR of Michigan. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Speaker, I respectfully urge my colleagues to approve the rule for the Civil Liberties Act of 1987.

Now, after 45 years, Congress has the opportunity to close the book on one of the most shameful events in our Nation's history: The internment, beginning in 1942, of 120,000 loyal Americans simply on the basis of their ethnic ancestry. There was no trial; there was no jury.

Those interned were not foreign spies disloyal to the United States. Many had sons or brothers fighting with the 442d Regimental Combat Team, which was comprised of Americans of Japanese ancestry and which is the most highly decorated unit in the history of American fighting forces.

Among those interned were old men and women who had toiled in the fields of California. Their hard labor made barren lands productive, lands that many would lose as a result of the internment.

Those interned were not unscrupulous agents of a foreign power: They were business people who had worked long and hard to build small businesses and to become respected members of their communities. And, those interned were not recent immigrants of uncertain loyalty; most were born in this country and were proud citizens from birth.

I was one of those interned. I was 10 years old. If someone, anyone, could show me how by any stretch of the imagination any reasonable person could suspect me to have been a security threat, I would abandon this effort here and now.

The fact remains that no Americans of Japanese ancestry committed any acts of treason or disloyalty, and the fact remains that the internment was not a mere inconvenience to Japanese-Americans.

Evacuated with little notice and little explanation, thousands of Americans lost their homes, their businesses, their farms. And we lost 3 years of our lives. The financial losses were enormous. But the losses of friends, education, opportunity, and standing in our communities were incalculable.

The internment was not, as some say, "regrettable but understandable." It was wholly unjustified in light of what we know now and, even more distressing, unjustified in light of what anyone who had wanted to know the truth could have known in 1942. As a consequence, our entire Nation was and still is shamed by the internment.

Yes, it was a time of great national stress. But moral principles and rules of law are easy to uphold in placid times. But are these same principles upheld by great nations under great difficulty and stress? Sadly, we as a nation failed such a test in 1942.

Congress enacted legislation in 1942 to implement the internment, and it is now up to Congress to demonstrate our national—and natural—capacity for justice and wisdom. Let us show the strength of our Nation and our system of laws by admitting the errors of 1942, apologizing for these errors, and making some efforts toward redressing the damage we have done.

Let us state clearly and unequivocally our commitment that such a wholesale abuse of civil rights will never again happen in this land. H.R. 442 will state such a commitment and redress these wrongs.

Mr. Speaker, I urge my colleagues to approve the rule.

Mr. TAYLOR. Mr. Speaker, I yield 10 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I think it is a shame that we have a bill of this significance on a day when our time constraints are so difficult. Many Members want to leave today so they can get to Philadelphia this afternoon for the celebration of the Constitution. I understand that. I will not call for a vote on the rule. I will not belabor the point, but unfortunately a lack of debate does not allow the time necessary to fully discuss this issue.

This bill is known as the Civil Liberties Act. It was placed on the calendar on Constitution Day for a purpose, in my judgment, and that is to make it very difficult for anyone who has a difference of opinion with the committee's report and the bill here to be able to offer that in a seriousness of discussion.

It is to be taken as a gesture in support of the Constitution if one supports the bill in all of its glory, and if one has a dispute with a portion of the bill it makes it rather difficult to discuss that.

Nonetheless, I would like to discuss on this time my reasons for opposing a major portion of this bill.

During the 96th Congress, Mr. Speaker, I cosponsored H.R. 5499, which established the Commission to investigate this question, the Commission on Wartime Relocation and Internment of Civilians. I did that because as a Californian growing up I was unaware of the way Japanese-Americans and Japanese nationals who lived in the United States, particularly in my home State of California, were treated during World War II. As I learned about it, as I began to understand some of those things, I thought it was necessary and that we as a nation had a responsibility to clear the record of any insinuation that those who were involved, that is, those Japanese-Americans and those Japanese nationals living in the United States, were anything else than loyal Americans. For that reason I considered it to be an honor to be selected from this House to serve on that Commission and to spend 2 years studying this matter.

As the only Member of this body, the only Member of either the House or the Senate, the only currently elected official sitting on that body, I felt that I had a responsibility not only to review the historical record, but to also place it in the context of today's imperatives and today's priorities with respect to the spending of taxpayer funds. In that regard I suppose I was in a different position than most of the other members of the Commission.

I must say that I felt that the Commission's findings, that is that the decision was the result of three major factors, a lack of political will, some race prejudice and war hysteria, that those findings were accurate. Nonetheless, I do believe that we have not given a full emphasis to all of those elements and a full appreciation and understanding of the circumstances and what we intend to do by our response in this Congress.

It seems to me it is extremely important for us to investigate what happened some 40 to 45 years ago, attempt to take lessons out of that and apply those lessons to the present as

well as to the future so that we do not repeat those mistakes. If we believe or we lead our Nation to believe that this decision by Franklin Delano Roosevelt was primarily in response to racial prejudice, we mistake his decision, we do ourselves a disservice because we take no lessons out of this to apply to the future. If it is as simple as that, we did not need a commission. If we in fact believe that to be true, it will give us no lessons for the future because we are all against race prejudice.

The question is, How could someone seemingly without race prejudice, how could someone with the interests of America at heart make this decision? How could F.D.R. make that decision? To me that means we have to look in the historical record and see it is a far more complex thing than to say it is racial prejudice, that is it, and let us be against racial prejudice because we will not avoid the tough questions in the future. It is more complex than that, I think, when one gets into wartime situations and therefore it seems to me it is extremely important to set the record straight. Yes, to say absolutely that no single Japanese-American or Japanese national living in the United States was ever found guilty nor was there evidence of the fact that they were involved in being disloyal to the United States, we ought to set that record straight.

Therefore, I believe we ought to have an official policy of the U.S. Government in the nature of a piece of legislation passed by this Congress and signed by the President of the United States. We ought to recognize it was a major error. We ought to make an official apology. And if we really mean it in terms of making sure we do not repeat this or something similar in the future, we ought to have an educational fund where we continue to fund studies of this period and the lessons that arise out of it.

Those who think that the generation that made these decisions did so merely out of racial prejudice and we will not do that in the future ought to remember what occurred in the United States when we had our hostages in Teheran. There were cries in the Nation and including this body and the Senate that we ought to round up all Iranians whether or not they had done anything wrong and in effect hold them hostage until we had our hostages released in Iran.

The problem is how to make sure we do not fall into that trap. How do we set aside mechanisms so that discussions will come forward so that a President of the United States will have the ability and the obligation to receive information from all parts of our society in order that he or she will avoid that in the future?

Mr. Speaker, one of the things I think we have to recognize is that we are judging a previous generation with the ability of 20-20 hindsight. I think the one major shortcoming of the Commission was that we ignored what was known as the MAGIC cables. Any student of World War II knows what the MAGIC cables are. Those are the cables of the Japanese Government during World War II, the code we broke and they unknowing that we had broken the code continued to send their messages. The information that was made available to Franklin Delano Roosevelt at the time he made this decision gave quite a different view of things than what we found subsequently. I will address that later on when we are discussing the bill itself.

All I am saying is what we ought to do is take a very careful historical review of this.

Last, I would say this: I will be offering an amendment to knock out the individual reparations. I could go back and show my colleagues the debate that took place in the Senate, that took place in the House, where prime sponsors of the legislation in the Senate to establish the Commission said they would not support the establishment of the Commission if monetary reparations were the outcome of that legislation. We were told that was not the indicia of whether we were doing a serious job, rather when we began as a commission we were supposed to study the historical record and make any recommendations we thought were appropriate. Now we hear, however, the argument that unless we have an apology accompanied by money the apology means nothing.

I hope we address that seriously. We are talking about $1.25 billion. Have we come so far in this country that we say nothing is of value, even legislation, even an official apology, unless it is accompanied by monetary reward? I hope not. But that is the argument that has been made. If we do not have individual reparations involved what we are doing is hollow, it is phony.

The other thing we have to consider is this: As elected officials we have the obligation to establish priorities, and that means a priority for $1.25 billion has to be determined. Is it more appropriate in this circumstance than for Social Security recipients, for those on welfare, for those receiving food stamps, for our men and women who are in the Armed Forces today and do not have adequate housing or for a whole host of other things? It seems to me what we have to do is as elected officials not say $1.25 billion sound like a good sum, let us do it, but where does it stack up with respect to other priorities? It seems to me that is a more difficult decision, but nonetheless it is a decision we have to make.

There is no one here I think that would suggest that $20,000 is the value of having been denied one's liberties for a period of time. I have never heard that argument. There is no one that suggests $20,000 makes things right. There is no one that suggests $20,000 is adequate compensation for the time one spent away from home and in a camp. So what is it? It is taken as the indication of the significance, of the symbol, of the sincerity of our action.

I ask my colleagues, does it make sense that we in America have come to a point that sincerity can only be judged by a dollar sign accompanying any piece of legislation?

Mr. BONIOR of Michigan. Mr. Speaker, I yield myself such time as I may consume to respond to my colleague, and then I will move the previous question.

Mr. Speaker, I have a deep amount of respect and admiration for my friend from California, Mr. LUNGREN, but I would like to take exception to one particular thing that he said, and that is the timing of this piece of legislation. I cannot think of a more appropriate way for Members of this institution to celebrate the 200th anniversary of this Constitution than to be discussing this legislation which gets to the heart of that Constitution.

□ 1040

This piece of legislation that we will have before us in just a few minutes to be talked about in this institution, to be talked about in this Chamber, the Chamber of free speech that is admired by every people and country of the world, it seems to me is the best way to celebrate this very important day, to talk about the right to liberty, as he has just talked about, the right not to be lifted from your home in the middle of the night, the right to be compensated, the right to grow up without fear; all of these issues that are at the heart of the Constitution, particularly the Bill of Rights and the first 10 amendments will be discussed today.

So I am pleased that the leadership has decided along with others to schedule this bill and I am hopeful that we can talk to America in a very important and significant way through this bill this afternoon.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. BONIOR of Michigan. On that I will yield for purpose of debate only.

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Speaker, my point is not that this is not an appropriate day. My concern is because we have a national celebration in Philadelphia to which a number of Members wish to attend and because we are under time constraints, and I think the gentleman recognizes that as much as I do, I am not sure we have the ability to give attention to it for the full debate and to gain the attention of the Members

that something of this seriousness ought to have. That is my only point.

Mr. FRANK. Mr. Speaker, will the gentleman yield?

Mr. BONIOR of Michigan. I yield on that point briefly to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I thank the gentleman for yielding.

Mr. Speaker, I admire the seriousness with which the gentleman from California has approached this, though I disagree with him in one aspect. But I must say I think we have left adequate time. We started this early, we did away with 1-minutes, we are not going to rollcall on the rule because I believe it is an open rule that puts no constraints on Members. I believe we will have several hours to debate because what emerged from the subcommittee and committee process was the general sense that our disagreeement here focused on this major question of the compensation. The gentleman has a language amendment, as he knows many of us agree with him, that language amendment—Members legitimately may differ about that but it is not a major difference of opinion. There is difference on both sides of the aisle. We have one central issue, the question of money. We will have debated that for probably 2 hours or so and I do not think if you look at the way this House deals with things that that is an inadequate amount of time.

I thank the gentleman from Michigan.

Mr. BONIOR of Michigan. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. COELHO). Pursuant to House Resolution 263 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 442.

□ 1043

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 442) to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, with Mr. GRAY of Illinois in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Massachusetts [Mr. FRANK] will be recognized for 30 minutes and the gentleman from Florida [Mr. SHAW] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Chairman, it is a great privilege for me to be able to yield such time as he may consume to the gentleman from New Jersey [Mr. RODINO] the distinguished chairman of the Committee on the Judiciary who has done so much to bring us to this moment today.

Mr. RODINO. Mr. Chairman, today as we celebrate the signing of our Constitution 200 years ago, we have an opportunity to reaffirm that this great document of human liberty applies to all Americans by favorably considering H.R. 442, the Civil Liberties Act of 1987.

The preamble of the Constitution speaks eloquently about the blessings of liberty, the most basic and fundamental of our civil rights. All American citizens enjoy these rights and they expect to be protected from arbitrary imprisonment by the Federal Government. Some 40 years ago, during World War II, the Federal Government without providing any due process under law, sent nearly 120,000 loyal American citizens and resident aliens of Japanese ancestry to remote internment camps. Many of these individuals, in the panic of sudden departures, lost their businesses, farms, and homes. Most of all they were deprived of their personal freedom. This great wrong to this day remains uncorrected. A truly great nation is worthy of its greatness when it recognizes that it has made mistakes. We now have the opportunity to recognize and to redress this grave injustice by passage of H.R. 442.

On June 17, 1987, the Committee on the Judiciary ordered reported H.R. 442 with a single amendment in the nature of a substitute by an overwhelming vote of 28 to 6. The provisions of H.R. 442 as reported by the committee are as follows:

The bill contains an apology by Congress on behalf of the Nation to those of Japanese ancestry who were subject to evacuation, relocation, and internment during World War II. The Congress states in the apology that the actions of the Government were carried out without adequate security reasons and were motivated in part by racial prejudice and wartime hysteria. The Congress further states that individuals of Japanese ancestry suffered enormous damages both material and tangible, all of which resulted in significant human suffering for which appropriate compensation has not been made.

The bill also authorizes the establishment of a trust fund of $1.25 billion to be used for two purposes:

The primary purpose of this authorization is to provide $1.2 billion to make payments of $20,000 to each surviving individual of Japanese ancestry deprived of liberty during the relocation program.

The second purpose is to provide $50 million for the establishment of a civil liberty public education fund to publish the hearings of the Commission and to sponsor research and public educational activities about the internment period so that it causes and circumstances may be understood.

The Committee on the Judiciary concluded that it is difficult to provide adequate, financial compensation to the individuals of Japanese descent who were relocated from the west coast during World War II for the fundamental violations of their civil liberties and constitutional rights they suffered, but that the restitution payments provided in H.R. 442 represent a strong affirmation by the Congress that a very grave mistake was made by the Government in the relocation program. In recommending restitution payments to eligible individuals, the committee, which regularly considers the claims of individuals who have been wronged by the Federal Government, followed precedents in awarding damages to those who have been convicted or detained without due process of law. The committee concluded that restitution payments demonstrate a tangible commitment by the Government of the United States that such wrongs should not be committed again. Although a formal apology is important and the education fund is needed, these actions alone, without compensation, are not adequate to redress the wrongs.

The committee recommends that the House act favorably on H.R. 442, as amended, to remedy the grave injustice done by the U.S. Government during the internment period to U.S. citizens and to permanent resident aliens of Japanese ancestry.

I want to commend Representative BARNEY FRANK who has provided real leadership on this bill as chairman of the Subcommittee on Administrative Law and Governmental Relations of the Judiciary Committee. As will as to commend the gentleman from Florida [Mr. SHAW] for his contribution.

I urge this House to act favorably on H.R. 442. These Americans, all loyal individuals, suffered tremendous losses through the disruption of their lives and loss of their freedom. It is long past time for us to redress these wrongs—and it is particularly fitting that we do so on this day when we celebrate the signing of that great document of freedom and justice, our Constitution. I urge your support of H.R. 442.

Mr. SHAW. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as the ranking member of the subcommittee that convened the hearings on H.R. 442 and the subcommittee that initially consid-

ered this bill for markup, I am pleased to see that this issue has finally come to the floor of the House for consideration. As many of my colleagues are aware, this issue has been considered in subcommittee for several Congresses and has considerable legislative history behind it. I think it will be healthy for us as a nation, for this Congress to finally consider this issue and put it behind us.

As many of you know, H.R. 442 contains a statement of the Congress with regard to the factual history surrounding the U.S. Government's relocation and interment of American citizens of Japanese ancestry during World War II. That statement includes a recognition by Congress that the Government's decision to evacuate, relocate, and intern U.S. civilians during World War II was a decision made and carried out without adequate security reasons, and was a decision motivated in part by racial prejudice and war hysteria. The bill further makes a formal apology on behalf of the people of the United States for these particular actions carried out by the U.S. Government during World War II. This bill further requires a review of all criminal convictions which resulted in the implementation of the decision to evacuate, relocate, and intern these civilians; and requests pardons, where appropriate, for those convictions.

H.R. 442 establishes a fund to be called the "civil liberties public education fund" which among other things will be used to make restitution to each individual under the bill in the amount of $20,000. This fund will further be used to sponsor research and public educational activities regarding the events surrounding the relocation program in part so that the causes and circumstances of these events may be better understood. In order to implement these programs and make the restitution required in the bill, H.R. 442 authorizes $1.25 billion.

The Administrative Law Subcommittee, over the past several Congresses, has held a total of 6 days of hearings on this issue and those hearings have provided some very compelling and effective testimony, including the testimony of Members of this very body which have built a very strong record in favor of this legislation. I believe the internment of Americans of Japanese ancestry was an injustice and I believe our Government's ability to recognize it as such and address it under these unique circumstances and particularly on this historic day is noble and just. However, I do not say this without some serious reservations about any precedent we may be setting in passing this bill because I do not believe this Government or any government can or should attempt to apologize or make restitution for every wrong committed during a time of war.

There are Members who will be introducing some very substantive amendments here this morning and I would like to encourage all of the Members to examine these amendments very carefully and vote according to their own feelings as they come up and we will be looking forward to the final passage of this bill.

□ 1055

Mr. FRANK. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I consider being able to serve in this body an enormous privilege, and at no point in my service here, which is now in its seventh year, have I felt more privileged. What we are about to do today, I hope, is an act of greatness for a Nation.

This is a great Nation. It is a nation, more than any other in the world, that is struggling successfully with the obligations of being a leading world power in the most humane and democratic and open way. We are not perfect. There are no perfect human societies. But we have in this country under the Constitution we celebrate today mechanisms whereby we can improve. We are improving, and one very clear example of that is this bill today.

Members have said, some critically, that what we are doing is judging the past by the standards of the present. Yes, we are. This is not to say that people of the past were bad people. None of us can be confident today that we would necessarily have acted differently 45 years ago. We all hope we would have, but none of us, I think, can be absolutely certain that we would have. What we are saying is that given the evolution in the ideals of this country, we believe we would have.

There has been discussion of racism. This country in the 1940's was a country much more tainted by racism than today. One of the great triumphs of America in this postwar period is the extent to which we have confronted the racism that was not peculiar to America. That is a human problem. But we have confronted it, I think, more forthrightly and more successfully than most other societies. We continue to have work to do.

What we are saying is that we have an obligation as a people in charge of the Government today, a government which, by the way, was the financial beneficiary of what happened. That was not the motivation for it, but there were seizures and expropriations which financially benefited the Government 40 or more years ago.

What we are saying is that as part of our effort to use our Constitution to improve ourselves we are going to admit that we made a mistake, and I think it is part of being a great Nation to be able to admit that we made a mistake. I think we ought to contrast ourselves with the Soviet Union. The Soviet Union during World War II engaged in massive resettlements of its populations. It was big news in the Soviet Union because some of those who had been so cruelly resettled were allowed to have a protest demonstration.

Let us let that be a contrast for the world. They are proud of the fact that they allowed people who had been brutally mistreated to object to it. We have long since passed that point. What we are saying today is, yes, we made a mistake. We understand that, and we apologize for it. I think that sentence in this bill that says, "the Congress apologizes on behalf of the Nation" is not only a great statement, it is a great example for the rest of the world that a strong and powerful and free Nation is not embarrassed about saying that we are not perfect and we are getting better, and we acknowledge that we made that mistake. That is what we are doing today.

As for the money, it is not strictly compensation because, frankly, if we were compensating people for the pain and loss and the suffering, by any legal standard I am aware of we would be paying far more than this. In fact, people ought to understand that a lawsuit is now pending. Some of those Japanese-Americans who were victimized have filed a lawsuit, and while the executive branch of the Federal Government tried to have it thrown out, they were unsuccessful. The Supreme Court did say it had been brought in the wrong court. The court where it was brought, the circuit court, allowed it and said the staute of limitations should not be a bar. There is a suit pending.

Under this bill, people who accept the compensation offered—and I should not say, "compensation," because it is not meant to be and it is not by any means full compensation—people who accept that settlement may not proceed with the lawsuit. So this might well save the Government money. Nobody can be sure. I would not bet on the success of that lawsuit, but there is a lawsuit pending, and what we are saying is that here is an offer of a settlement, and if you accept that, then you are out of the lawsuit. It is an absolute bar to people pursuing the lawsuit, where if they are allowed to sue the Government and the Government is admittedly at fault, the damages would be far greater than anything in here.

If we look at this $20,000 in 1945 dollars, we are talking about a much, much smaller sum. Why the money? It is not because money is the only measure of sincerity, but because a simple apology alone does not seem to us to convey the full force of what we are trying to do here.

Yes, we want to make it very clear that we are in effect imposing a penalty on ourselves to show and to demonstrate in fact how sincere we are. It is a figure arrived at by the commission, and we think it is an appropriate one.

Mr. Chairman, I am very proud to be a part of a democratic legislative body, Representatives of a very great Nation, that says to the world that we made a mistake and we are now, I believe, if we do this, in a stronger position to play the role that many of us are proud to have America playing.

We in this Chamber from time to time criticize other governments for their failure to recognize human rights, and I am glad to participate in those efforts, whether it is on behalf of Soviet Jews or blacks in South Africa or others who are being denied their rights.

Acknowledging the mistake that we have made, saying that national security ought not to be invoked inaccurately as a basis for condemning fellow citizens for no good reason, I think that strengthens our ability to be a strong voice for freedom across the world.

Mr. Chairman, we will go further into this, but at this point I will yield to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Chairman, I want to compliment the gentleman from Massachusetts [Mr. FRANK] for his leadership on this issue.

I strongly support H.R. 442, but I noticed that in this legislation the Aleuts of Alaska who were not Japanese but who were incarcerated and put in concentration camps, who lost their churches and their homes and were actually used as slave laborers by the U.S. Government, are not included in this bill, and yet they have been and were in the past.

I would like to have the gentleman's comment because I know that I have introduced that legislation and we have had lengthy hearings on that legislation. What is going to be the outcome of that particular piece of legislation?

Mr. FRANK. Mr. Chairman, I thank the gentleman for bringing the point up. He deserves a great deal of credit as the Representative of Alaska for fighting hard on behalf of the Aleuts, as he mentioned.

As the gentleman noted, there was originally legislation which encompassed all of this. We decided after discussion that it would be best to deal with this in different bills. As the gentleman is aware, there were some technical problems involving the Aleut situation because there were some land transfers involved and it involved other committees. It involved the Ways and Means Committee and the Interior Committee.

I am pleased to be able to report to the gentleman that I know he has received a letter from the chairman of the Judiciary Committee, the gentleman from New Jersey [Mr. RODINO], to this effect. The subcommittee which I chair passed this bill out unanimously with the strong support of the gentleman from Florida and others on both sides of the aisle. There was a period in which some technical work had to be done. The first-rate staff of our committee and the gentleman's staff and others did a good job on this. I can report to the gentleman, as the committee chairman has informed him by letter, that that bill is now awaiting action by our full committee. I know of no objection to it on our full committee. As far as we can tell, it was supported unanimously, and I believe I have the support of the ranking minority member here. We supported that unanimously, and the gentleman is right, it is a companion piece of legislation here. It involves a much, much smaller amount of money because we are dealing with many fewer people. But is is equally a matter of justice. It deals with the same period, and I very much hope that within a short period of time we will be standing on this floor, the gentleman from Alaska, the gentleman from Florida, the gentleman for New Jersey, and myself, passing this bill as well.

Mr. YOUNG of Alaska. Mr. Chairman, again I want to thank the gentleman for his leadership on this issue, and I thank him for his assurance that the Aleut bill will arrive on the floor.

Mr. FRANK. Mr. Chairman, I reserve the balance of my time.

Mr. SHAW. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. FISH], the ranking minority member of the Judiciary Committee.

Mr. FISH. Mr. Chairman, I rise in support of the Civil Liberties Act of 1987, and I compliment the subcommittee chairman for his leadership in bringing this to the floor. At this time I would simply like to associate myself with the remarks of the gentleman from Massachuesetts [Mr. FRANK] and commend him for his eloquence in underscoring the principles behind this legislation.

Mr. Chairman, I rise in support of the Civil Liberties Act of 1987 (H.R. 442). This legislation would make restitution to those Japanese-American citizens and permanent resident aliens of Japanese ancestry who were evacuated from the west coast during World War II.

Soon after the outbreak of World War II, 120,000 Americans of Japanese ancestry, two-thirds of whom were actually United States citizens, were either interned in camps or otherwise deprived of their civil rights. H.R. 442 is omnibus claims legislation that attempts to redress that historical wrong in two fundamental ways. First, H.R. 442 contains a formal apology by Congress on behalf of the Nation of the Japanese-American community. Second, the bill establishes a trust fund of $1.25 billion, the bulk of which will represent onetime $20,000 payments to each living Japanese-American or permanent resident alien deprived of liberty. Approximately $1.2 billion will be used for these payments and the remainder—approximately $50 million—will be used for educational and humanitarian activities to further study the causes, effects, and implications of these events. The estimates are that there are approximately 60,000 individuals now living who would be eligible for this onetime payment.

It is important to emphasize that this $20,000 payment per person is not reimbursement for the loss of property or employment. Rather, it is in the nature of "liquidated damages"—these individuals are being partially compensated for the violation of their civil rights. The concept of monetary damages in compensation of violations of constitutional rights is not unusual or unprecedented. In 1971, the Supreme Court recognized a citizen's right to be compensated for violations of fourth amendment rights; that is, unreasonable searches and seizures. *Bivens* v. *Six Unknown Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971). Since that time, the Supreme Court has expanded this "constitutional tort" concept to include violations of the fifth and eighth amendments as well. Lower Federal courts have applied the constitutional tort principle to claims based upon a variety of other constitutional rights including those protected by the first and sixth amendments. The deprivation of due process here was fundamental; the individuals who were evacuated and relocated had not been convicted of any crime. As the Members of this House know, our Constitution explicitly protects citizens against false arrest, false imprisonment, and abuse of process.

In 1980, Congress established the Commission on Wartime Relocation and Internment of Civilians to review the facts and circumstances surrounding the decisions made with respect to persons of Japanese ancestry during World War II. That Commission conducted 20 days of public hearings and in December 1982, published its final report. H.R. 442, in large part, would implement the recommendations made by that Commission. The Committee on the Judiciary favorably reported H.R. 442, as amended, on June 17, 1987. The vote on final passage was a bipartisan 28–6.

Mr. Chairman, H.R. 442 concerns a difficult and disquieting subject. Difficult because it relates back to a time of great stress in our Nation's history. Disquieting because the official deci-

sions made at that time—evacuation, relocation, and internment—do not, in retrospect, appear to have been justified by either military necessity or valid national security reasons. H.R. 442 is also difficult and disquieting because it requires this House to determine what is the appropriate way to provide "redress" or "restitution" for the wrongs done.

In reality, there is no way to fully compensate persons who lost their homes, their jobs, their businesses—and their freedom—because of hasty and emotional judgments that proved to be wrong. Lives were not only terribly disrupted; they were indelibly altered. It is true that these injuries cannot ultimately be measured in dollars alone. But that, to me, is not an argument against any form of monetary relief. The funds contained in H.R. 442 are a significant and tangible gesture on behalf of the U.S. Government. Frequently, Congress acts favorably on claims legislation that is only partially compensatory, but nevertheless represents the final settlement of the claim involved.

Most importantly, what this legislation and its historical origins require us to do is to confront the real meaning of being an American. This year is the 200th anniversary of our Constitution and the rights contained in that wonderful document are not just legalisms or precepts on paper. They are supposed to be guarantees—against an arbitrary government as well as public and private prejudice. America went to war in 1941, but the principles contained in our Constitution should not have gone to war as well.

Before ending, I would like to add a personal note. For 18 years—1969 to 1987—my personal secretary and office manager was Mrs. Aya Honda Ely. Mrs. Ely was more than an employee—she was and is a treasured friend of mine and my family. Aya is a native-born American citizen of Japanese ancestry. At the outbreak of World War II, she was a young woman living and working in California. In early 1942, she was dismissed from her job with the State of California, simply because she was of Japanese descent. She and the rest of her family were subsequently evacuated and relocated under the exclusion order to a camp in Arizona where whe remained until 1944.

Many on Capitol Hill know Aya, a charming and dedicated woman, certainly as loyal an American as any of us. She now is enjoying a well-earned retirement. Rarely did she refer to her experience during World War II, and never was there an expression or trace of bitterness. But she, and thousands like her, are symbols of the tenuous nature of our democratic society. Aya Ely and the others who endured these events deserve this recognition and national apology.

Mr. FRANK. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. PASHAYAN].

Mr. PASHAYAN. Mr. Chairman, I rise in support of H.R. 442.

Mr. Chairman, this bill draws a conclusion to one of the most shameful episodes of American history.

On February 19, 1942, President Franklin Delano Roosevelt himself, by Executive Order 9066, ordered that all Americans of Japanese descent be forcefully removed from their homes, places of business, schools, and churches, and be taken to military detention camps to live in confinement—men, women, and children. Thus did F.D.R. coldly and calculatedly conceive and executive a policy of national racial discrimination. And thus did F.D.R. commit his own act of infamy, staining forever the pages of American history, an act of infamy for which he and his party must forever bear full responsibility.

□ 1110

These Japanese-Americans had committed no crime against the United States. The history of World War II does not document a single act of espionage or sabotage by a Japanese-American. Thus did F.D.R. open one of the saddest chapters in American history. For 3 years the U.S. Government, under F.D.R.'s Executive order, deprived these Japanese-Americans not of their lives, but of their liberties and properties. In the internment camps they lived without comfort or privacy, while their children learned the rituals of American life, including the daily pledge of allegiance to the American flag, which stands for justice and liberty for all. After nearly a year of confinement, the Government gave internees the opportunity to earn their freedom by signing a declaration of absolutely loyalty to the United States, a requirement not levied on other American citizens. Many internees who signed the statement later joined the American war effort as part of special Japanese-American regiments that fought in some of the most bitter battles of the war. The Government further isolated into a separate camp those internees who expressed their bitterness and resentment by refusing to sign a pledge of loyalty.

H.R. 442 acknowledges the injustice done to the Japanese-Americans who were interned during World War II and aplogizes to them on behalf of the Nation. It also directs the Department of Justice to review the criminal convictions of individuals who were convicted of violating the law imposed under the internment, with a view of exonerating them.

I question whether provisions in the bill for individual redress are the most appropriate remedy. In light of Congress' efforts to reduce Federal spending, I tend to favor a monument or a library dedicated to all the internees that will stand as an enduring reminder to succeeding generations of Americans of what F.D.R.'s government did to some of its own citizens, and that it must never be done again.

Nevertheless, I rise in support of H.R. 442 because I believe that Congress must act to bring this painful issue to a responsible conclusion.

I ask my colleagues on our side of the aisle to rise above partisan considerations, and to assist our colleagues on the other side. After all, it was their President who locked up American citizens without cause. Let us vote today to right the wrong, to be an enduring reminder of how wrong a righteous political party can be.

It seems to me that if he were here today among us as a colleague, Abraham Lincoln would surely vote "aye" on the bill.

Mr. SHAW. Mr. Chairman, I yield 2 minutes to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, yesterday our Nation participated in a celebration of citizenship in which we pledged allegiance to the flag and to the Nation for which it stands. That pledge ends with the simple words "* * * with liberty and justice for all." Let us give substance once again to these words by passing the Civil Liberties Act of 1987 which will recognize and apologize to Americans of Japanese ancestry who were treated with grave racial and economic injustice by being taken from their homes and interned in camps during World War II.

Passage of H.R. 442, without amendments, will stand as an eloquent testimony to the importance of the U.S. Constitution whose 200th anniversary we celebrate today. It is now time to admit a mistake caused by fear and bigotry. The trust fund authorized in this bill will be used for a modest restitution to each survivor of that internment and for public education to make sure similar events do not occur ever again.

Let us learn from the lessons of history. We do not want an atmosphere that tolerates civil rights abuses, even in wartime, which eventually caused the German clergyman Martin Niemoeller to say,

> In Germany they came for the Communists, and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me, and by that time no one was left to speak up.

Mr. Chairman, let this Congress speak up today to demonstrate that

the kind of wholesale abuse of civil and constitutional rights such as was found in the internment camps will not happen again in the United States.

Mr. Chairman, let us continue our celebration of the U.S. Constitution by passing the Civil Liberties Act of 1987.

Mr. Chairman, I would like to add my commendation to the gentleman from Massachusetts [Mr. FRANK], the chairman of the subcommittee, and to the gentleman from Florida [Mr. SHAW], the ranking minority member on the subcommittee, for their leadership on this very important bill.

Mr. FRANK. Mr. Chairman, I yield 2 minutes to the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I look upon this as a bill that every Member should vote "yes" on; and I rise in favor of H.R. 442, and ask my colleagues to support it without any amendments.

Mr. Chairman, I understand that there have been some misperceptions moving through the House that persons of Japanese ancestry living outside the west coast and in Hawaii were not subject to evacuation orders.

I simply want to stress to this body that this is not true. I know that at least 1,000 individuals of Japanese-American ancestry were residing in Hawaii, were in fact interned during this period.

I want to engage in a colloquy with the gentleman from Massachusetts [Mr. FRANK], and ask the gentleman, does the gentleman agree that in fact certain persons of Japanese ancestry who resided in Hawaii and were interned, whether the relief envisioned under this bill would apply to those individuals?

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. AKAKA. I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding.

Mr. Chairman, I appreciate the gentleman's concern; and I can say, and I have checked with the staff and with the experts on this, it is our information that there were Americans of Japanese ancestry living in Hawaii who were interned; and under the terms of this bill, they would be covered.

I do not know of the exact number, but Americans of Japanese ancestry residing in Hawaii who were in fact interned would be treated in this bill like anyone else who was interned, subject to the same offer, and they could accept the compensation in return for giving up their right to sue and have that same right as everyone else.

Mr. AKAKA. I thank the gentleman for the gentleman's response, and again I urge the Members to support the bill without amendments.

Mr. Chairman, 200 years ago today our forefathers adopted a Constitution in Philadelphia which they presented to the States for ratification. That Constitution is now the law of the land.

As stated in the preamble, the Constitution was established to secure the blessings of liberty to ourselves and our posterity. I can think of no better way to honor the bicentennial of our Constitution than by passing H.R. 442 and correcting the injustice of Japanese internment.

H.R. 442, the Civil Liberties Act of 1987, will implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. The passage of this legislation is long overdue.

H.R. 442, which I have proudly cosponsored, would implement the five recommendations proposed by the Commission. First, the bill recommends Congress to pass a joint resolution, signed by the President, recognizing the grave injustice that was done and offering the apologies of this Nation. Second, it would recommend a Presidential pardon for those Japanese Americans convicted of violations of statutes regarding curfew, evacuation, and relocation. Third, it would provide restitution of position, status, or entitlement lost because of exclusion and relocation. Fourth, a special foundation would be established to fund research and public educational activities regarding the internment. Finally, monetary restitution would be provided to those Japanese Americans deprived of their liberty or property as a result of internment.

I strongly support passage of H.R. 442, because it will begin to redress the wrong perpetrated on these innocent people. We cannot begin to compensate interned Japanese Americans for the indignity and humiliation they suffered. This legislation will not turn back the clock on internment, but it offers an apology that is long overdue.

Using his powers as Commander in Chief, President Roosevelt issued Executive Order 9066, which provided that "the successful prosecution of the war requires every possible protection against espionage and sabotage to national defense material, national defense premises, and national defense utiities * * * " Under this Executive order, "all persons of Japanese ancestry," regardless of citizenship or loyalty, living in specified military zones were interned in the interior of the United States. Japanese Americans living in California, and the western halves of Oregon and Washington, and the southern half of Arizona were placed into internment camps. Let me point out, however, that between 1942 and 1944, no Japanese Americans were convicted of espionage. In contrast, 18 Caucasians were charged with spying, during the same period, 10 of whom were convicted. As the Commission stated, internment of the Japanese Americans was based on, and I quote, "race prejudice, war hysteria and a failure of political leadership. A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry."

History cannot be changed. Today, however, Congress has the opportunity to formally recognize that the internment of Japanese Americans was a reprehensible event. Justices William O. Douglas, Earl Warren, and Tom C. Clark, in retrospect, have expressed their remorse about Japanese internment. Approximately 120,000 Japanese Americans had their lives disrupted, and were unjustly incarcerated. These individuals were guilty of no crime but were sentenced to internment without a trial. Throughout the Second World War the Federal Government deceived the public by referring to internment camps as relocation centers or assembly centers. Internees were referred to as "nonaliens." In fact, the internment camps were not relocation centers or assembly centers. These camps were circled by barbed wire fences and movement was restricted by armed guards. Individuals were not free to leave internment camps to "relocate" to another State. Instead, these citizens were forced to spend 2 to 3 years of their lives as prisoners of war in their own country.

In addition to having liberty denied, other basic constitutional guarantees were denied. The first amendment right of freedom of speech and assembly were denied to internees. The right to vote was also denied. Religious freedom guaranteed all citizens by the Constitution was denied to the internees. Shinto religious practices were prohibited in the camps on the grounds that they represented Japan. Buddhist priests were placed in separate Justice Department internment camps, thereby limiting the practices of Buddhism.

The Commission on Wartime Relocation and Internment of Civilians issued their report, "Personal Justice Denied," in December 1982. Congress has been debating this issue for the past 5 years. Will we continue to deliberate this issue until it is forgotten and put aside? I hope not, for to do so would be more of an injustice to these Japanese Americans. We must never forget that this event happened; rather, we need to remember and learn from this experience. It is this type of attitude toward our mistakes that makes America what it is today—a democracy.

Once again, I strongly urge my colleagues to support H.R. 442, so that all Americans may believe in our Constitution and its system of justice. Americans of all races and color should know by our action today that we have faith in and are prepared to defend "liberty and justice for all."

Mr. SHAW. Mr. Chairman, I yield 2 minutes to the gentlewoman from Hawaii [Mrs. SAIKI].

Mrs. SAIKI. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, as a cosponsor of H.R. 442, the Civil Liberties Act, I would like to express my strong support for this legislation and urge my colleagues to support this measure as passed by the Judiciary Committee.

As a young person growing up in Hawaii, I witnessed firsthand the forced relocation of many friends, neighbors, and relatives. Loyal American citizens, many of whose sons were fighting for our country in Europe, were placed in internment camps without sufficient legal recourse. Families were separated, and people lost homes

and businesses for which they had worked their entire lives.

Mr. Chairman, while I realize there are those who will oppose the financial commitment in the bill, I feel this section is fair and just. The money is hardly adequate to compensate for the loss of civil liberties. We can never fully repay people for the loss of their dignity and their legal rights under the Constitution. However, financial payment is an appropriate means by which to provide some restitution. While I understand that the internment was ordered under an atmosphere of war hysteria, the action was wholly unjustifiable.

In closing, Mr. Chairman, I would like to thank the Members of the Judiciary Committee for moving this bill to the floor, and I urge my colleagues to support H.R. 442.

□ 1120

Mr. SHAW. Mr. Chairman, I yield 5½ minutes to the gentleman from California [Mr. SHUMWAY].

Mr. SHUMWAY. Mr. Chairman, I thank the gentleman from Florida for yielding me this time.

I am opposed to the bill. I think it is important that I set forth before the entire body the reasons for that opposition.

I have studied this bill over the course of the past several years during which it has been pending here in the House of Representatives. I have a very keen interest in the subject and I have therefore devoted considerable time and effort to looking at the facts surrounding this bill.

Certainly the testimony presented before the Commission initially and more recently before the Judiciary Committee, as well as the books that have been written and published about the ordeal that Japanese-American citizens were put through during the World War II years are very touching, very emotional, and certainly are provocative of some kind of response; but it seems to me a sad thing that much of the debate about H.R. 442 has revolved around emotional arguments, rather than the more rational arguments that I think should prevail.

I think, for example, the very title of the bill, the very number of it, H.R. 442, named after the regimental combat team which was made up of Nissei's that fought so valiantly in Europe and the fact that it is being brought up today, September 17, those are neat devices to bestow some magic upon the bill; but I think that the merits of the bill need to be discussed and looked at in a very careful way. I think if we do that, we would decide that the redress provisions of this bill really are not well taken.

First, there was a claims procedure for Japanese who had lost property. There were payments made. There were releases signed. We can now go back and question the adequacy of those payments, but the procedure was a thorough one and it prevailed for some years after Congress enacted the procedure in 1948.

Second, there are many cases of legal wrongs in America where we do not respond with money damages. Often we do, to be sure, but cases of declaratory relief, cases of injunctive relief, are cases where we cure a wrong other than by putting money in the pockets of those victims.

This particularly bothers me here, because I really believe that in this case we are judging the actions of the past by applying standards of today. Certainly today in the area of civil rights and civil liberties we have a much greater sensitivity than we had 45 years ago in 1942.

I do not know anyone yet anyway who is advocating that we go back and pay $20,000 to each of the black schoolchildren of this country who may have been victimized by the separate but equal education policies that prevailed in the South before the Supreme Court decision in 1954 declaring that to be unconstitutional.

The Constitution also in the fourth amendment says that we shall not permit unlawful searches and seizures. Pursuant to that, we developed the Miranda warning. Are we going to now go and say that those who were incarcerated after convictions that did not entail the reading of Miranda rights should now be paid $20,000 because that civil right was violated?

The eighth amendment of the Constitution says that we shall not allow cruel and unusual punishment, and yet we know that there were prisoners detained at Alcatraz who were kept in dungeons and chained. Shall we go back and reward them now because their civil liberties were violated?

I just suggest that actions that may at one time have appeared to be either legal or justified, may not be legal or justified under today's standards. These were all cases of Government actions, maybe not occurring during wartime, but nevertheless actions which resulted in civil rights violations. To go back now and say this particular area of civil rights violations should be addressed with money damages I think sets a very dangerous precedent and I think is a procedure that up to now, at least, has not been part of our law.

I also object to this means because it is obvious from reading the bill that the $20,000 payment is not intended to have any testimentary effect. It is payable only to those still living who were incarcerated in camps. If really the purpose of this is to demonstrate to the Government that it did something wrong, then I believe there should be some testimentary effect; that is, there ought to be the ability to inherit on the part of those heirs of those who were unlawfully incarcerated.

The wrong that we are seeking to redress, if indeed this bill passes, is not contractual, but a wrong that should have testimentary benefit to it.

Finally, Mr. Chairman, I believe that this bill may revive some of the bias that we saw during World War II and the years shortly thereafter against good Japanese-American citizens.

Mr. Chairman, I think that we do not want to do anything to revive that bias. We now count Japaness-American citizens as some of the most respectable, hard-working, loyal Americans that we have in our country. To separate them in this fashion, to make them the recipient of a stipend which is an effort to pay them for something I think could revive some bias and I think the bill is dangerous for that reason.

Let us not try to resolve this problem by just throwing money at our problems as a balm to our conscience. Let us do something more meaningful and more constructive that will have lasting effect throughout future generations.

Mr. SHAW. Mr. Chairman, I yield 1½ minutes to the gentleman from the Territory of Guam [Mr. BLAZ].

Mr. BLAZ. Mr. Chairman, one of the best motivators for men in battle is the belief in what they are fighting for. The men of the 442d Regimental Combat Team fought fiercely, violently, and with great distinction, because they believed in what they were fighting for, despite the indignities that were placed upon their brothers and their sisters.

Here we are 45 years later and we have yet to remove this blight from our conscience. If we are to celebrate the 200th anniversary of our great Constitution with a clear conscience, the first order of business is to clear our conscience. We can do this by approving H.R. 442.

There is a great similarity between the experience of the gentlemen from California, BOB MATSUI and NORM MINETA, and myself. We spent time in our youth in detention in concentration camps. There is one great distinction. My guards in the American Territory of Guam that was captured were enemy soldiers. Theirs were American soldiers in America.

Mr. Chairman, justice delayed is justice denied.

Mr. RODINO. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I rise in strong support of this important bill. I compliment Congressman BARNEY FRANK, the distinguished chairman of the Judiciary Committee's Subcommittee on Administrative Law and Government Relations, and the other subcommittee members, for their work on it.

I especially compliment our colleagues, Congressmen NORM MINETA and BOB MATSUI. Their strength and their commitment to the legislation were invaluable in developing and bringing the bill before us today.

Mr. Chairman, as a native Californian, I remember with great sadness when friends and neighbors just disappeared from my own community, sent to so-called relocation camps, their lives and families disrupted, their personal belongings lost and property sold to speculators. It was a tragic time, a blot on our Nation's history.

The country should rightfully mourn for how loyal American citizens and lawful residents were so cruelly deprived of their freedom without the slightest semblance of due process, all because of their Japanese ancestry.

We can never adequately compensate our friends, our neighbors, our colleagues for the enormous losses and suffering they were forced to endure. But, with this bill, we can acknowledge their pain and we can say we're sorry. The redress provided is very, very modest compared to the tremendous losses which they suffered.

As we celebrate the bicentennial of our Constitution, it is a fitting time for the country to acknowledge—and to try to right—the wrongs that were done. I urge all of our colleagues to support this measure today, without amendment.

Mr. RODINO. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, earlier in this debate one of my colleagues from the other side of the aisle attempted to suggest that the shame of this chapter in American history was a shame that should rest largely on the shoulders of F.D.R. and the Democratic Party. I think that our party must accept primary responsibility in that our President was in power. We were in control of the Congress, but a study of history will suggest that leaders on the other side, leaders in the Republican Party, the Governor of California, for example, also was involved in this tragic chapter in American history.

My colleague also concluded that the reason he would now today vote for this important resolution is in the memory of Abraham Lincoln. His study of history might suggest that even Abraham Lincoln in the throes of the Civil War when a similar panic had hit this Nation, suspended habeas corpus.

I think, frankly, if you study the chapters of history that have been written, you will find that great nations consistently make great mistakes in the heat of war.

This is indeed a shameful and tragic chapter in our Nation's history. It is sad that Americans of Japanese ancestry who were never found to have been disloyal during the entire World War II conflict and many of whom served admirably and courageously during that conflict, were in fact tainted and imprisoned. For many of them their lives were ruined.

I struggled with this bill, nevertheless, because of the suggestion that a $20,000 compensation would somehow close this chapter in American history and that if enough money were spent in compensation, we could put it behind us; but as I reflect on it, this payment is consistent, I think, with our Constitution and the great tradition of our country that suggests that we do have due process and that citizens can petition for redress of grievances. This is an extraordinary way to do it, through the passage of legislation, but I think it is entirely fitting to offer to those who suffered this injustice, this compensation in full settlement of their claim against our U.S. Government.

I think this attempt at settlement is fair and straightforward and it will close a tragic chapter in America's history.

Mr. SHAW. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Chairman, some might believe that since I was the sole dissenter on the Commission and since I will have a major amendment in terms of the money, that I find fault with the basic conclusions of the Commission. I do not.

I believe the history of the period leaves little room for doubt that a grave injustice was done. I fully concur with the finding of the Commission that the implementation of Executive Order 9066 was largely a result of "race prejudice, war hysteria, and a failure of political leadership."

However, I think that there is a difference between self-examination and self-flagellation. They say that hindsight is 20-20. I as one who was born after World War II doubt if my generation has a full appreciation for the difficult circumstances and the plight that the United States was in during the onset of World War II.

In one of the Commission's hearings, we had a military historian from the Department of Defense devote a large portion of the meeting describing the terrible fix that the United States was in. In his book, "Born Free and Equal," published in 1944, Ansel Adams, a vocal opponent of the internment process, refers to these difficult circumstances of the war, when he said:

> The spectacular victories of Japan, the crippling of our fleet at Pearl Harbor, the possibility of invasion of our West Coast—all were facts of tragic import, and at the time, were considered more than ample justification of the mass exodus. In addition, there was the threat of public retaliation against the Japanese American population. We may feel that racial antagonisms fanned the flame of decision * * * but the fact remains that we were in the most potentially precarious moment of our history—stunned, seriously hurt, unorganized for actual war * * *

I might tell you that this was before the Battle of Midway. We had lost every single battle of the war. Americans were facing the fact that we were going to lose.

But please do not misunderstand. I believe the internment and relocation experience of our fellow Americans and resident aliens was wrong; however, when a nation is at war fighting for its very survival, it should come as no surprise that wrong-headed decisions can be made. I think we have to understand the complexity of it.

Another area that I do not believe is receiving the kind of treatment it deserved was the MAGIC cables. It did not receive it in the hearings we had in the Commission and I do not think it has received it in this House as well.

□ 1135

As a Commissioner I can tell you that we did not thoroughly examine the avenue. But let me just give you some of the messages that were going across the desk of President Franklin Delano Roosevelt at the time he made this decision. In retrospect we know this information was incorrect. But the President was up against a potential loss of the United States and these are the messages that came across his desk. These were cables that we had intercepted, official Japanese Government cables.

> Utilization of our second generation and our resident nationals: In view of the fact that if there is any slip in this phase our people in the U.S. will be subjected to considerable persecution and the utmost caution must be exercised * * * We shall maintain connection with our second generation.

This is from the Japanese Embassy in Washington back to the Japanese Government in Tokyo.

> We shall maintain connection with our second generations who are present in the United States Army. We also have connections with our second generations working in airplane plants for intelligence purposes.

Those are just two. There were many, many of these.

We know now in retrospect that they were wrong. Whether the people in the Embassy here were intentionally giving bad information, whether they were giving information based on what their hopes were, whether they were trying to make themselves look good with the Government in Japan, we do not know. But you have a President of the United States who is making decisions about the survival of the Nation, receiving intercepted coded messages of the enemy saying that they have infiltrated the Japanese-American community in the United States.

In retrospect it is a slander against the Japanese-American community. We know now there was no evidence that this ever happened, but the President did not know that. He was faced

with war at a time when we were losing every battle in the Pacific.

The question is do we merely say this was racism on the part of F.D.R., racism on the part of the U.S. Government, racism on the part of all his advisers, and say therefore we owe something; or do we look at the complexity of the situation? Do you want to talk about figures? Earl Warren and F.D.R. were the two biggest advocates of this. Little known is that someone called J. Edgar Hoover said that it was not necessary. He said he had information about those for whom there was reasonable suspicion in the Japanese community. He knew where they were, and he could round them up and we could hold them. In fact, that is what we did in Hawaii as opposed to what we did in the rest of the country.

So we were wrong.

The question is what do we do now?

Little remarked upon has been the fact that in 1948 the Congress did establish a mechanism for recovery of property losses. That act was amended in 1951. It was amended again in 1956.

It was said at that time this would be the final decision, this would take care of it. That was supported by the Japanese-American community at that time.

Twenty years later we now have another bill. It is before us. I do not believe that the apology is wrong; we need an apology. We need an official recognition of error. Not that we do not need an educational fund. I support a $50 million educational fund.

The question is do we need individual reparations? I think it is more complex than has been presented.

I hope Members would take that into consideration.

Mr. RODINO. Mr. Chairman, I yield 3 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, America had just observed the Thanksgiving holiday; we were preparing to celebrate Christmas; it was a good year for giving thanks and giving gifts. We had emerged from the depths of the economic depression, tens of thousands of us were back to work, and millions more had regained faith in themselves and in this country.

Then without warning or provocation we were attacked. Americans were killed somewhere on an island in the Pacific called Oahu, in a small blue graveyard known as Pearl Harbor. We were stunned, angered, outraged. In this Chamber President Roosevelt asked the Congress to declare war and was greeted with a panoply of emotion which no President before or since has ever witnessed.

We had been attacked by a truly foreign nation. The American people found the ways of Japan, its culture, its language, its history, its mores, the faces of its people, to be foreign to us here in fortress America.

We were outraged and we had every right to be outraged. We were determined to our souls to defend ourselves and more, to punish.

When the strongest nation in the history of the world leaps up in defiance, slashing forth, it will inevitably sweep from its path and trample upon those things which is calmer, more thoughtful times, it would take great care to respect and to nourish.

Perhaps now almost a half century later we can look back at those times of outrage and determination and try at least to understand why we placed American-Japanese children in prison camps.

Perhaps we as a people who understand the mistakes that are made in confusion and fear, perhaps we can reflect now about why we confiscated the property of our American neighbors of Japanese ancestry. Given the dreadful drama of those times, perhaps we can find some logic for having rounded up and locked up an entire race of American people. Perhaps we can.

But regardless of the reasons for those actions, we now know, each and every one of us, know it was wrong.

Today's decision is simple, will the United States of America with its love of justice say to those of its fellow citizens who were wronged, "We are sorry. You were violated. We will make you whole again as best we can."

Mr. SHAW. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. HORTON].

Mr. HORTON. Mr. Chairman, it is somewhat ironic that I have this opportunity to stand here in the well of the House as one of the cosponsors of H.R. 442. Mr. Chairman, 45 years ago I was a company commander of an infantry company that made the combat landing in North Africa. I was with the 9th Infantry Division, and later I was with the 5th Army headquarters and made the combat landing in Italy.

Somewhat later I was serving on the G-3 staff of the Peninsula Base section in Naples, Italy, and it was my responsibility to meet the 442d when they made their entry into the war. They landed in Naples and I went out to meet them and met their officers, met many of them, met many of the enlisted personnel, and then I had the opportunity to witness the heroism of the 442d as it went into combat in Italy.

It was a tremendous contribution to the war in Italy which they made, and I do not think there is any other military operation in which more people distinguished themselves than the members of the 442d. The 442d has stood out in my mind over these 45 years as one of the great combat units of the American Army in World War II.

Then when I learned later, and especially after I came to Congress and learned of the tragedy that had occurred to many of the relatives of these people who were participating as members of the 442d Combat Regiment, it really appalled me. I have been one of the principal sponsors for a number of years in trying to get this bill through and I want to commend the bill's sponsors, particularly the gentleman from California [Mr. MINETA], and others who have brought the bill to the floor today.

Mr. Chairman, four Congresses ago I was a sponsor of legislation which called upon the President to designate May 4 through May 10 of each year as "Asian-Pacific American Heritage Week." That week has been set aside annually to pay tribute to the untold contributions made to the American society by Asian-Pacific Americans.

Our passage of H.R. 442 today will erase a perennial black mark on that commemoration. Today also is the 200th anniversary of the signing of our Constitution. It is very appropriate that we pass this legislation today.

It is time we made amends and recognize the tremendous contributions that the Japanese made to the war effort, and H.R. 442 is one way that we can pay that respect to those people who made that tremendous contribution. The record of the 442d Combat Regiment is one of the Army's proudest moments. H.R. 442's passage today will be one of our proudest moments.

Mr. Chairman, I rise in strong support of H.R. 442, the Civil Liberties Act of 1987, which implements the findings of the Commission on Wartime Relocation. I want to commend the bill's sponsor, Majority Leader TOM FOLEY, Mr. MINETA, and the many other Members who have committed so much time and energy to this effort over the years.

More than 120,000 Japanese-Americans were incarcerated in internment camps during World War II. For up to 2 years, their basic civil rights were stripped in the name of military necessity. The possibility of a Japanese invasion along our Pacific coast distorted our national judgment and intensified our wartime fears. Quite simply, in our zeal to win the war, the United States overreacted. For that, many are owed an apology.

Now, four decades after the fact, we cannot offer full restitution to the scores of Japanese-Americans forcibly detained. But H.R. 442 makes a statement to the world, and to those interned and their descendants. H.R. 442 acknowledges the fundamental injustice of our actions, apologizes on behalf of the United States, and makes restitution to the 60,000 survivors of Japanese internment camps.

Today is the 200th anniversary of the Constitution. What better celebra-

tion of America's open and free society than to come before the world on this important day, admit a serious national mistake, and attempt to make reparations? I urge my colleagues to support this important, overdue legislation.

Mr. FRANK. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. LEHMAN].

Mr. LEHMAN of California. Mr. Chairman, I rise in support of the Civil Liberties Act and in opposition to amendments which would strip all meaning from this gesture.

We cannot change history but we can take this small step towards correcting an injustice to American citizens whose only crime was to have been of Japanese ancestry.

We should, I believe, in this small way attempt to compensate these Americans for the loss of their freedom which was taken in a shameful moment without the due process procedures which we all cherish.

Thousands of loyal Americans were denied most of the basic rights supposedly guaranteed them by our Constitution. Forty-five years later we have the opportunity to take a step toward mitigating that wrong.

There is no conjecture about what occurred. Americans of Japanese descent were prohibited from living, working, and traveling on the west coast. Internment camps where many were forced to live were prison-like and located in inhospitable areas of the West and South. Families were uprooted and homes and businesses sold at drastic losses.

Japanese-Americans were stripped of their most basic human dignities, deprived of all the rewards of American citizenship, and made to live like criminals.

The legislation we have here attempts to give redress and compensation to those who suffered in the internmant camps. While we can never diminish what happened, we can provide compensation as a symbol of justice to the survivors and a legacy they leave their families.

This bill, I believe, is also an important step towards seeing that this never happens again.

The internment policy represents a dark day for our country. Wartime hysteria leading to this policy ran counter to many of the principles embodied in our Constitution. Most of the basic liberties guaranteed to Americans were taken from a select few, each of whom were loyal citizens of this country.

Our constitutional celebration is a celebration of the principles outlined in that document. Therefore, it is fitting that we formally recognize the internment policy as wrong and we now try to correct that policy as best we can.

I only regret, Mr. Chairman, that we cannot compensate those thousands of Japanese-Americans who have already died.

Let us not wait any longer.

Mr. SHAW. Mr. Chairman, I yield the balance of my time to the gentleman from New York [Mr. STRATTON].

Mr. STRATTON. Mr. Chairman, I would like to mention that we have had from the gentleman from California [Mr. LUNGREN] and the gentleman from Montana [Mr. WILLIAMS] an opportunity to try to put this item in perspective. The whip advisory in connection with this Civil Liberties Act of 1987 says that it was racial prejudice and "wartime hysteria".

That was no hysteria. That was real wartime, and we Americans were on the receiving end.

Remember Pearl Harbor? That was not hysteria. That was war! That was an act of war and it was carried out as Franklin Delano Roosevelt pointed out at the very time our negotiators, Cordell Hull and the Japanese envoys Admiral Nomevra and Ambassador Kurusu and others were supposedly trying to solve the problem without military action at all.

□ 1150

But we ought to recognize, as Mr. WILLIAMS has very properly and effectively spelled out what happened: we had been wiped out at Pearl Harbor and, we had submarines firing on the west coast of Oregon, we had drifting balloons that had been sent over from Japan with bombs on them which started forest fires. So this was no wartime hysteria. This was no drill. We had learned that the consulate in Hawaii had been all along the center of espionage for the Japanese.

If to expect that the Japanese in Hawaii had helped in the espionage, it was reasonable to think that the orders that Mr. LUNGREN has referred to, our military expected an amphibious landing by the Japanese and it seemed possible that Japanese people might come out and help the landing. They could not ignore any possibility.

So this was not racial prejudice, this was a proper action to contemplate hysteria. Franklin Roosevelt did the right thing. In fact as Commander in Chief, if President Roosevelt had not done this he would have been derelict in his duty.

Mr. FRANK. Mr. Chairman, in the interest of expedition, I yield back my 30 seconds.

Ms. PELOSI. Mr. Chairman, as a strong supporter of H.R. 442, the Civil Liberties Act of 1987, I am pleased to see it brought before the House for consideration. Now, as we celebrate the bicentennial of the Constitution, it is most fitting that we act to rectify one of the most serious violations of constitutional rights in the history of this Nation. The forcible relocation of 120,000 Japanese-American citizens and resident aliens away from their homes during World War II constituted an appalling abuse of civil liberties.

Solely because of their Japanese ancestry and heritage, these loyal Americans were subjected to circumstances and conditions in direct violation of their civil, constitutional, and human rights guaranteed by the Constitution. They suffered, they lost property, finances, and tragically, their freedom. The stress experienced by individuals and families caused untold damage to these Americans. It is up to this Nation to ensure that these losses are adequately redressed.

It is truly unfortunate that we cannot redo that past. Nothing that this Government does could really repay the losses and the harm caused by this relocation. The hardships and injustices took away from these people things that no one can replace. Broken families and disheartened individuals cannot easily be fixed.

This legislation, however, takes major steps to help the Japanese Americans in their 45-year struggle for justice. The least the U.S. Government and we as a people can do for these 120,000 people, mostly native-born Americans, who were denied their basic rights and held against their will in forcible confinement for up to 3 years, is to see that this legislation is enacted. H.R. 442 provides $20,000 compensation to Americans who lost their homes, their farms, and their business, and who were unjustly imprisoned without a trial for up to 3 years. The bill also makes a long overdue formal national apology for the internment. It will correct military and employment records of detainees; and, allocate money for research to protect civil liberties, in order to ensure that this kind of action never happens again.

Mr. Chairman, I have heard first hand of the tragedy of this forcible relocation. A number of the people who personally experienced this blot on the Nation's history came from San Francisco. A number of the former internees now reside there. The absolute least thing we can do for these people is to see that they receive justice. This bill is redress; it is justice. Today, on the 200th anniversary of the signing of the Constitution, we can pay no greater respect to the document and to its principles than by upholding it. Passage of H.R. 442 is a clear message that this flagrant violation of civil liberties was wrong, that it will be corrected, and that it will not happen again. I urge my colleagues to vote "yes" on H.R. 442.

Mr. MOODY. Mr. Chairman, I rise in strong support of H.R. 442, the Civil Liberties Act of 1987, to make restitution to Japanese Americans interned during World War II. I am a cosponor of this bill.

We must formally restore some justice to the loyal, law-abiding Japanese-American citizens who were forcefully relocated and interned 47 years ago. We can never undo the injustice that was done to them, but some financial restitution will help make both symbolic and material amends to the survivors—a small token for the liberties and benefits that they lost during their internment.

These 120,000 Americans, most of whom were born in this country, lost not only their freedom but in many cases also their homes, businesses, and farms. They suffered the hu-

miliation of detention and removal from their communities.

They were incarcerated without trial, without due process. They were denied the basic civil rights that our Constitution guarantees to all Americans. And they were denied these rights simply because of their ancestry.

The very least we can do now as a great and self-correcting country is to formally apologize to the 60,000 survivors for the difficulties, and to offer at least token compensation. The formal apology is long overdue.

H.R. 442 is an effort to right this 47-year-old wrong. It is vital that Congress makes an official acknowledgment of an old mistake. We must make it clear that we as a country do indeed value the rights guaranteed by our Constitution and understand that denial of these rights to American citizens must eventually be acknowledged and redressed.

Mr. DIXON. Mr. Chairman, today, while we celebrate the bicentennial of the Constitution, an entire ethnic group nears the end of its 45-year journey to see justice. On this, the 200th birthday of the signing of the American Constitution, I am proud to join my colleagues who have spoken out in support of H.R. 442, the Civil Liberties Act of 1987.

The framers of the Constitution, recognizing that no institution is perfect, devised a document that could be amended to allow for growth, change and the correction of past errors. The members of the first Congress took advantage of this flexibility and added the first 10 amendments, the Bill of Rights. These amendments emerged from their discussion of one of the more difficult problems of government—balancing national defense and the need for order in society against the rights of individual citizens.

During the opening months of World War II, over 110,000 Japanese Americans and permanent residents were forced to sell their homes and businesses. They were then herded from their communities into detention camps established by the U.S. Government. Many spent the next 3 years of their lives under armed guard, behind barbed wire.

In 1942, racial prejudice and wartime hysteria upset the delicate balance between the rights of the citizen guaranteed under the Constitution and the power of the state, and one of the greatest abuses of civil liberties in American history occurred. H.R. 442, in extending a congressional apology to the internees on behalf of the Nation and offering modest monetary compensation to them for the violation of their civil liberties, seeks to acknowledge and redress the injustice perpetrated 45 years ago.

On this special birthday celebration of the Constitution, when we recommit ourselves to upholding it as a living document, I am proud to cast my vote in favor of an unamended H.R. 442. I urge my esteemed colleagues in the House to cast their votes similarly.

Mr. DELLUMS. Mr. Chairman, I am pleased that the House of Representatives is today considering H.R. 442, the Civil Liberties Act of 1987, which would implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. I am an original cosponsor of H.R. 442, and have been in each Congress it has been introduced.

The U.S. Government, in total defiance of the Bill of Rights, forcibly removed and detained 120,000 Japanese Americans and resident Japanese aliens during the early days of World War II. However, there was no mass removal or detention of Italian Americans or German Americans. In my mind, the racist motives of wartime relocating are a deep stain on the honor of our Nation. Further compounding the injury caused to Americans of Japanese descent, our court system failed, in Korematsu versus the United States, to uphold its duty to protect the rights of citizens from this illegal executive branch action. Later legislation, such as the Evacuation Claims Act, did not come close to repaying the massive economic hardships imposed upon Japanese Americans.

H.R. 442 would set up a trust fund of $1.5 billion, and a lump sum of $20,000 would be paid out of the trust fund to any individual of Japanese ancestry who was deprived of his or her liberty or property under the internment program. Passage of the legislation is long overdue and is needed to demonstrate to all Americans that our system of government is founded or principles, as reflected in the Bill of Rights, that may not be violated.

I am proud to have this opportunity to vote today in support of the Civil Liberties Act. I only wish that there was a tangible means to restore the lost honor and dignity of our citizens of Japanese descent.

Mr. LANTOS. Mr. Chairman, I rise today in strong support of H.R. 442, the Civil Liberties Act of 1987 which provides redress to Americans of Japanese ancestry who through outrageous injustice were interned during World War II. It is fitting that today, as we celebrate the anniversary of our Constitution, we address one of the most flagrant violations of the principles laid down in this historic document.

The number assigned to this bill is also highly significant—H.R. 442. It is numbered for the famous 442d Regimental Combat Team which fought in some of the fiercest European campaigns of World War II. This entirely Japanese-American military unit was the most highly decorated unit of its size in the entire military history of the United States, earning over 18,000 decorations.

Yet the courage and patriotism of the 442d Regiment did not prevent one of the most discriminatory acts ever taken by the Government of the United States. On February 19, 1942, President Roosevelt signed Executive Order 9066 which was the first step in depriving Americans of Japanese ancestry of their rights as U.S. citizens. Initially, Japanese Americans on the west coast were merely prohibited from entering sensitive military areas. Soon, however, evacuation orders were issued which resulted in the wholesale removal of all Japanese Americans living on the entire west coast to camps further east. Most were forced to remain there for the duration of the war, deprived of their civil rights and constitutional liberties.

Mr. Chairman, I also wish to emphasize my full support for the provision in the legislation to provide monetary restitution to those who suffered. This bill authorizes a total of $1.25 billion in fiscal year 1989 and subsequent years to establish a civil liberties public education fund in the Treasury. Payments of $20,000 are to be made to each person who was subject to confinement or relocation during World War II. No amount of money can adequately compensate these people for the emotional and financial hardship, and loss of liberty they experienced. This payment, however, is the most appropriate gesture we can make. I urge my colleagues to support this provision as the only equitable and reasonable step we can now take.

Recognition of this terrible wrong is long overdue. It was an act based on ill-founded fear and xenophobia. It violated the most fundamental principles of the very document whose writing we are celebrating today. Mr. Chairman, I am an original cosponsor of this legislation, and have been a supporter of this legislation since it was first introduced. I firmly believe that our celebrations today will be complete only if H.R. 442 is approved. In it, we recognize that people of all races and ancestry can be loyal citizens of the United States of America.

Most important of all, we must never permit comparable actions to be taken again, whether in peacetime or in war.

Mr. ATKINS. Mr. Chairman, I am astonished that we are engaged in a debate today to determine a "fair" price for liberty. Forty-five years ago, this Nation committed one of the greatest transgressions of civil rights imaginable. And, on the very day we have been granted the opportunity to apologize to the 120,000 Americans of Japanese ancestry for the enormous wrongs committed against them, it is shameless that we would mire ourselves in a debate over what price we might attach to this apology.

The dollar figure we would make available to each surviving internee was determined by an independent congressionally mandated Commission on Wartime Relocation and Internment of Civilians. Listening as the members of the Commission did to stories of overwhelming economic, social and educational losses, they determined that more was required of us than eloquent words of apology. The losses were too severe and the mistakes of this Nation too great to leave unanswered the question of financial reparations. Hence, the Commission recommended financial remuneration and I believe that our apology today would be vitiated without it.

Mr. Chairman, how can any of us understand what it must have been like to endure imprisonment—imprisonment without due process and, most significantly, imprisonment without any guarantee of safety for oneself and one's family. We rounded up individuals, made them leave their homes and jobs, housed them in horse stalls in race tracks only 4 days after removing the horses and then shipped them off to far off isolated internment camps. We visited upon these people fear and anguish and we tried pretty hard to strip our fellow Americans of their dignity. And, what was our justification—it was never proven that they were a security risk or that any military end was served. So, we now have to acknowledge that we committed this egregious act because we could not tame our own racial prejudice and because we succumbed to wartime hysteria. The irony is that

these were among the very things we were fighting against in World War II.

If we believe we are now a more enlightened people, and certainly we must, then we have nothing to fear in setting whatever precedent giving these funds might imply. I was gratified to note that in our judicial history there are examples of compensation being awarded where there have been assaults on civil rights of individual Americans. However, if there were no precedents to draw on, I, for one, would have no fear of establishing one here today. Our Constitution is wise, but the men and women of our Nation are not infallible. Only by creating legal precedent and acknowledging great wrongs where they have occurred can we ensure that we never revisit an era of wholesale racial prejudice.

I, therefore, ask my colleagues to put aside any reservation they may have about financial reparations. Providing such reparations may be dramatic recourse, but the wrongs we are here to redress warrant the most profound apology we can offer. Let us not, therefore, make the hallmark of today's debate one of assessing the cost of civil liberties; let us get on with the business of celebrating our commitment to civil liberties. I urge my colleagues to defeat any amendments to eliminate individual compensation or to alter the means by which such funds are calculated.

Thank you.

Mr. HUGHES. Mr. Chairman, I rise in support of H.R. 442, a bill which I've cosponsored, to indemnify American citizens of Japanese descent who were forcibly relocated during World War II. As my colleagues know, in 1942, some 120,000 individuals of Japanese ancestry, including 77,000 American citizens, were removed from their homes on the west coast, and evacuated to other areas of the country. Indeed, many such individuals were removed to my congressional district in southern New Jersey, where they have made major contributions as outstanding citizens in our community.

This was a wrong of monumental proportions. Even common criminals are given the right to be confronted by their accusers, to be represented by an attorney, and to have a trial by a jury of their peers—but these basic rights were denied to these American citizens and residents during the hysteria of wartime. Indeed, there was no basis for the suggestion that Japanese Americans did anything illegal or wrong or would be disloyal to our country.

To the contrary, many Japanese Americans fought for the United States with valor and distinction during World War II. One person who comes to mind is my friend and colleague, U.S. Senator SPARK MATSUNAGA, who was twice wounded in battle in Europe and North Africa.

Although World War II saw us at war with a number of countries that made up the Axis powers, no other ethnic groups or nationalities were singled out for similar treatment. It was only Americans of Japanese heritage who were rounded up en masse, and forced to abandon their homes, their professions, their farms, and their community ties.

Many Japanese Americans did indeed lose a great deal in the relocation. They were moved hastily and taken to distant locations, losing their homes, businesses, and most importantly their liberties. I feel it is remarkable that these fellow citizens accepted this treatment with grace and dignity, and never flagged in their loyalty to the United States.

I realize that the Federal Government has serious fiscal problems. However, I believe that fiscal problems can be no excuse for not paying our debts, and it is clear from the historical record, that we as a nation owe a debt to these Americans who were denied their liberty and property without due process of law. It would seem that the $20,000 per person payment authorized by H.R. 442 is a relatively small amount, compared to the wrong that was committed. I urge my colleagues to vote for H.R. 442.

Ms. OAKAR. Mr. Chairman, I rise to add my voice to the eloquent entreaties of my colleagues. It is time and past time that we redress the injustices to our own people. We must pass this Civil Liberties Act.

Manzanar, Minidoka, Heart Mountain, Poston, Tule Lake, Gila River, Granada, Topaz, Jerome, Rohwer. These were America's concentration camps.

Unfamiliar names of remote and desolate places, seared permanently in the minds of some, forgotten by too many.

Yet history records in America, the forcible eviction of 120,000 men, women, and children of Japanese ancestry from their homes.

Without trial, without wrongdoing, without the law, Americans were forced into camps by the Government.

Japanese Americans lost their freedom, their careers, their land, their dignity. Some found mental anguish to last a lifetime.

Many would prefer to forget. But as we have healed and moved on we cannot leave behind this harsh lesson. Wherever and whenever liberties can be taken from one, they can be taken from any or all.

They said it can't happen here. Now we hear it can't happen again. Yet, there's talk again of camps here in America. Talk of segregating the ill at their most vulnerable hour. Talk of special circumstances that somehow allow us to forget that these are human lives.

We have learned to listen to the faint whisper of Soviet dissidents. We have experienced what our brothers and sisters felt in Hungary, in Czechoslavia, in Cambodia, Poland, Uganda and South Africa, when they stood for rights and died without mercy. We discovered that the gulag exists and that all the wonderful speeches about human rights could mean precisely what they did not say.

But that is not America. We are somehow something more for ourselves and all who hold hope for our world.

Let us set the example. Let us make our symbolically amends and pledge not that it can't happen again, but that we will not allow it to happen again.

In the end, our commitment to human rights must remain not a political decision, or a legislative decision, or heaven forbid, a financial decision; ultimately we must decide as moral human beings, responding with shock and horror to the pain we inflict upon our brethren.

I urge us to return to fundamental values in framing our answer here today. Please vote for this Civil Liberties Act of 1987 on the 200th anniversary of our Constitution.

Mr. LEVINE of California. Mr. Chairman, I rise today as a cosponsor in strong support of H.R. 442, the Civil Liberties Act of 1987. With this legislation, which is long overdue, we have the opportunity to right a grievous wrong committed against Japanese-Americans over 40 years ago.

The internment of Japanese-Americans during the Second World War is one of the most reprehensible episodes in our history. Without one shred of evidence, for no apparent reason other than their appearance and heritage, more than 120,000 Japanese-Americans were forcibly removed from their homes and incarcerated in what amounted to prisoner-of-war encampments.

No charges were filed. No hearings or trials were held. Yet, when the President signed Executive Order 9066, the constitutional rights of these Americans, whose ancestors happened to be Japanese, were taken from them in an action unprecedented in our history.

This was a case of hysterical racism. Nothing more and nothing less. Because Japanese-Americans looked different, and were easily identifiable by name, the United States Government ignored the Constitution and jailed Japanese-Americans to placate the irrational hate felt by many Americans in the wake of Pearl Harbor.

Of course this attitude ignored the great contributions to our country by Japanese-Americans. Their contributions to business, architecture, science, medicine, education—are all well documented. Some of our greatest scientists, educators, and business leaders are Japanese-Americans.

Anyone familiar with the history or World War II knows that Japanese-Americans fought with great bravery and distinction in our Armed Forces in Europe. Of course they were not allowed to fight in the Pacific Theater. The same racist attitude which led to the internment of Japanese-American civilians convinced our military leaders that Japanese-Americans could not be trusted to fight against Japan. How many German-Americans were told that they could not be trusted to fight against Hitler?

The internment experience was traumatic and humiliating. Those interned suffered many losses. In many cases their personal and professional lives were decimated. They lost friends, lost education, lost opportunity, lost standing in their communities. And, worse, they lost nearly 3 years of their lives.

Although some remedial measures were implemented to redress the war's injustices, it was not until 1980 that Congress began in earnest the process of national reconciliation with the creation of the Commission on Wartime Relocation and Internment of Civilians. The recommendations of this Commission, after hearing from 750 witnesses, are the basis for the bill we are debating today—H.R. 442.

H.R. 442 finds that the evacuation, relocation, and internment of individuals of Japanese ancestry was carried out not because of any documented acts of espionage or sabotage, but because of racial prejudice, war hysteria and a failure of political leadership. It also finds that there was no military or security reason for the actions, and that those who

were excluded suffered enormous damages and losses. Most importantly, this legislation recognizes that the basic civil liberties and constitutional rights of those interned were fundamentally violated by the evacuation and interment.

H.R. 442 seeks to redress this violation of thousands of Americans rights. During my days in the California State Legislature, I coauthored a bill, which became law in 1982, to permit those Japanese-Americans in the civil service, who were dismissed or who resigned during the war because of their Japanese ethnicity, to claim $5,000 as reparation.

As desirable and appropriate as is the intent of H.R. 442, Americans of Japanese ancestry can and will never be adequately redressed for their loss and suffering. However, this bill is a very important expression of the recognized responsibility of the U.S. Government in this shameful chapter in the history of this country.

Mr. Chairman once again, I call on my colleagues to do the right thing by those who suffered so much. I strongly urge a "yes" vote on H.R. 442, to ensure swift passage of this vital bill.

Mr. Chairman, last year I delivered a lengthy speech on this subject to the Japanese American Citizens League in Los Angeles.

I submit it for the RECORD:

REMARKS OF CONGRESSMAN MEL LEVIN BEFORE THE JAPANESE AMERICAN CITIZENS LEAGUE, LOS ANGELES, CA, AUGUST 24, 1986

Good afternoon. I am very pleased to be with you today and to have the opportunity to speak with you. I am honored to have been invited to speak with you by a marvelous public servant, city councilman George Nakano of Torrance. And I am honored to serve in Congress with two of your members who are known to be two of the finest Congressmen not just from California but from the entire nation, Bob Matsui and Norm Mineta.

Having grown up in California, I have long been familiar with the work of the Japanese American Citizens League, and with your many contributions in the areas of education and civil and human rights. I have a great deal of respect for the work of the JACL, so I am especially happy to be here.

As I stand here today, I cannot imagine a United States without Japanese Americans, any more than I can imagine a United States without Italian Americans, Polish Americans, or—well, you fill in the name. Ours is a diverse culture. This very diversity lends to its stunning complexity, and is part and parcel of the richness and uniqueness of our country. And no matter what our diverse heritages, we all share the same common bond: we are all Americans.

Japanese Americans have made contributions to virtually every profession in every region of the United States. Their contributions to business, architecture, science, medicine, education—are well-documented.

I would like to think things have always been well for Americans of Japanese ancestry. But such is not the case. In truth, there is a dark blot upon this country with respect to them. That dark blot is the internment of 120,000 citizens and permanent resident aliens of Japanese ancestry during World War II.

The decision to intern Japanese Americans followed a long and ugly history of west coast anti-Japanese agitation and legislation. From 1907 through 1948 anti-Japanese bills were introduced in every session of the California legislature. In 1907 an agreement between the United States and Japan halted immigration of male laborers. In 1913 a California law banned purchase of land by aliens "ineligible for citizenship." As Asians, the Japanese were barred from U.S. citizenship. This was perhaps the single most important factor affecting the issei (pronounced E-say)—first generation Japanese immigrants—because it kept them out of the American political process and left them virtually defenseless against discriminatory legislation.

In 1920 aliens were prevented from leasing land. In 1924 a new U.S. immigration law completely slammed the door on Japanese immigration.

It was in that context that the Japanese American citizens league was founded in 1929.

The anti-Japanese hostility stemmed in part from feared economic competition, and in part from outright racism. It was a time of what was so disparagingly called the "yellow peril"—fear of an unknown Asian culture.

The Japanese, small in number and with no political voice, became a convenient target for political demagogues.

In the first months of World War II, Japanese armies in the pacific won a frightening string of victories against the United States. In January and February 1942, the military position of the United States in the Pacific was perilous. There was fear the Japanese would attack the west coast.

As one individual in the government at the time recently explained, "frightened people do frightening things." And it was within that context that, on February 19, 1942, 10 weeks after Pearl Harbor, President Roosevelt signed Executive Order 9066. This order gave to the Secretary of War and the military commanders the power to exclude any and all persons, citizens and aliens, from designated areas in order to provide security against sabotage, espionage and fifth column activities.

President Roosevelt called December 7, 1941, "A day that will live in infamy." One historian has written that February 19, 1942 was a day that "should live in infamy," for shortly thereafter all American citizens of Japanese descent were prohibited from living, working or traveling on the west coast of the United States. The same prohibition applied to the generation of Japanese immigrants who, pursuant to Federal law and despite long residence in the United States, were not permitted to become American citizens.

So began one of the most shameful chapters in the history of the United States.

With no charges filed, with no hearings or trials, and with little notice, Japanese American citizens and aliens were given numbers and herded to "assembly centers." Allowed to bring only what they could carry, they were transported for the duration of World War II to 10 "relocation centers"—barely habitable camps or tar-paper shacks, surrounded by barbed wire fences.

The justification given for this action was military necessity. But the historical causes which shaped the decision to intern Japanese Americans were racism, war hysteria and a failure of political leadership. In fact, not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese Alien on the west coast.

The internment experience was, to say the least, a traumatic one. Those interned suffered many losses: Tremendous financial and personal losses—lost friends, lost education, lost opportunity, lost standing in their communities—and loss of nearly three precious years of their lives.

There were bitter ironies in the wake of Executive Order 9066. In early 1942 a newspaper ran a photograph of a little Japanese boy on a train headed for an internment camp. He was leaning out the window waving an American flag.

And in its attempt to "Americanize" the already American children in the camps, they had to salute the flag and sing "My Country, 'Tis of Thee, Sweet Land of Liberty." In this context these words ring hollow and exceedingly cruel.

Fourth of July celebrations were bravely held behind barbed wire in the camps, and in the shadow of sentry towers.

Departure from the camps was permitted only after a loyalty review. Many were allowed to leave to go to college outside the west coast or to private employment, or to join the Army. Some 33,000 Japanese Americans served during the war, some drafted right out of the camps. Parents in tar-paper shacks displayed starred banners indicating that their sons were American soldiers.

The irony of Japanese Americans fighting for a nation that confined their people is sharpened by the valor they displayed on the battlefield. For its size and length of service, no other American unit was more decorated than the 442nd Regimental Combat Team. The 442nd has been called the most highly decorated unit in the history of American fighting forces. Made up primarily of Japanese Americans, the unit earned more than 18,000 individual citations for bravery, including a Medal of Honor, 52 Distinguished Service Crosses, 560 Silver Stars, and no fewer than 9,486 Purple Hearts.

But after serving, one member of the 442nd returned home to California to find, as he said, "every store on main street had a 'No Japs Wanted' sign out front."

Hawaii's Senator Daniel Inouye, who lost an arm in combat and earned the Distinguished Service Cross, has said, "we were fighting two wars—one against the Axis overseas and another against racism at home."

And one detainee wrote: "The thoroughly American" internees "realized that Americanism had somehow skipped the Japanese Americans."

It was not until December 1944 that Japanese Americans were freed to return to their homes on the west coast. But many had lost everything. They were the victims of an indignity of tremendous proportions, and they lived with a tremendous stigma.

Although some remedial measures were implemented to redress the war's injustices, it was not until 1980 that Congress began in earnest the process of national reconciliation with the creation of the Commission on Wartime Relocation and Internment of Civilians. The Commission heard the testimony of some 750 witnesses, many speaking about their painful experience for the first time. The commission's lengthy and detailed report is an excellent historical study and a powerful indictment of a shameful wartime policy.

The commission recommended appropriate remedies for the injustices of the internment. Its recommendations are the basis of a bill—HR 442—the "Civil Liberties Act of 1985"—now pending in Congress with 140

cosponsors, of which I am one. This number—442—honors the 442nd Regimental Combat Team.

There are 12 findings in this important legislation, but I want to mention just five.

One, the evacuation, relocation and internment of individuals of Japanese ancestry was carried out without any documented acts of espionage and sabotage, or other acts of disloyalty by any citizen or permanent resident aliens of Japanese ancestry on the west coast.

Two, there was no military or security reasons for the evacuation, relocation or internment.

Three, the evacuation, relocation and internment of individuals of Japanese ancestry were caused by racial prejudice, war hysteria and a failure of political leadership.

Four, the excluded individuals suffered enormous damages and losses, both material and intangible, all of which resulted in significant human suffering for which full and appropriate compensation has not been made.

Five, the basic civil liberties and constitutional rights of those individuals interned were fundamentally violated by the evaucation and internment.

HR 442 seeks to redress the internment in several ways. First, the bill contains a provision which I would like to quote in total. It is titled "Recognition of Injustice and an Apology on Behalf of the Nation." It reads, "The Congress recognizes that a grave injustice was done to both citizens and resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. On behalf of the Nation, the Congress apologizes."

The bill also directs the United States Attorney General to review all cases in which U.S. citizens and permanent resident aliens of Japanese ancestry were convicted of violations of laws of the United States, and to recommend to the President for pardon consideration those convictions which the Attorney General deems appropriate. The President is requested to offer pardons to those individuals recommended by the Attorney General.

The bill directs executive agencies, to which Japanese Americans may apply, to review with liberality applications for the restitution of positions, status or entitlements lost because of acts or events during the internment period.

The bill establishes a $1.5 billion "civil liberties public education fund." This fund would be used in part to sponsor research and public educational activities so that events surrounding the evacuation, relocation and internment of U.S. citizens and permanent resident aliens of Japanese ancestry will be remembered and understood.

Lastly, the bill requires the Attorney General to identify and locate individuals excluded from their places of residence pursuant to Executive Order 9066 and to provide a one-time per capita compensatory payment of $20,000 to each of these surviving 60,000 people.

Hearings were held in Congress on this bill in both 1984 and this year. HR 442 is pending in the House Judiciary Subcommittee on Administrative Law and Governmental Relations, where members are hopeful that consideration can be completed this session.

There is no question in my mind about the appropriateness of monetary compensation to Americans of Japanese ancestry. During my days in the state legislature I coauthored a bill, which became law in 1982, to permit those Japanese Americans in the civil service, who were dismissed or who resigned during the war because of their Japanese ethnicity, to claim $5,000 as reparation.

The United States Congress supported the policy of removal and detention, and enacted a federal statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The Government of the United States was responsible for the catastrophic damages, and the government therefore has a legal and moral responsibility to compensate the internees for those losses.

Desirable and appropriate as is the intent of HR 442, Americans of Japanese ancestry can and will never be adequately redressed for their loss and suffering. But this bill is a very important symbolic expression of the recognized responsibility of the United States Government in this shameful chapter in the history of our country.

Japanese Americans have had other successes in rectifying the wrongs against them. In February of this year a federal judge overturned the conviction of Mr. Gordon Hirabayashi, who refused to be evacuated to wartime internment camp in 1942, was found guilty, and had fought the conviction ever since.

In June the Washington, D.C. U.S. Court of Appeals upheld the reinstatement of a lawsuit brought on behalf of the 120,000 interned Japanese Americans. The decision upheld a January decision that overruled a 1981 ruling that a six-year statute of limitations on suits against the government barred the lawsuit.

Still, Asian Americans of all backgrounds have felt the brunt of racism over the years, and it has been reported that there has been a rise in both racial tension and violence since the early 1980s. The current discrimination is motivated in part by fears among some Americans that Asians are "taking over" businesses and jobs. The inability of certain U.S. industries to compete effectively against Asian—particularly Japanese—imports has been a factor.

The most gruesome example of this is the 1982 murder of Vincent Chin in Detroit. Two former automobile workers thought Mr. Chin was Japanese, and they blamed Japan for unemployment in the American auto industry. Mr. Chin was beaten to death with a baseball bat the night before his wedding.

Incidents of anti-Asian behavior reportedly increased 40 percent from 1983 to 1984 in the Los Angeles area, the home of the U.S.' largest group of Asians.

As you can see, anti-Asian sentiment continues to exist in this country. This latent tendency rears its ugly head in times of economic stress, providing an excuse to abandon moral and legal principles.

Every one of us has a responsibility to do all we can to ensure that what happened to Americans of Japanese ancestry during World War II never again happens to them or to any other group. Those of us who so dearly cherish the best that America stands for, and who so deeply revere the principles and rights enumerated in our Constitution, must be ever-vigilant to make sure our democratic system and due process is not stampeded again.

The internment experience was a fundamental personal and social tragedy, not only for Americans of Japanese ancestry, but for all of us, for when even one person's rights are tread upon, the rights of all of us are tread upon, and society as a whole is diminished.

I might add that, as a Jewish American, I believe I have a somewhat heightened sensitivity to the curse of racial or religious discrimination. And I believe the historical frame of reference in which I was raised has heightened my interest in fighting against discrimination wherever it might rear its ugly head.

To help ensure that the events of World War II are never repeated, I urge you to be politically involved, for with that involvement comes power. The first Asian American is now serving on the Los Angeles City Council. Others serve in other cities and towns across this country, but not enough. Don't forget that being excluded from the American political process left Americans of Japanese ancestry virtually defenseless against the horrible discriminatory actions of World War II.

Lastly, be vigilant in protecting your rights, because when you do, you help protect the rights of us all and of all citizens of our great nation.

Mr. MILLER of Washington. Mr. Chairman, I rise in support of this important resolution which accomplishes four very important objectives. First, it is a long overdue apology for the injustice our country committed in interning Japanese Americans during World War II. If we are to be the leader of the free world and a strong and persuasive voice for human rights and freedom, then we must set an example for the rest of the world to follow and when we fail to set that example we must admit it and take action to rectify that mistake.

Second, we must not only admit our mistakes, we must make amends for them. This bill does that. It is important that we pay restitution to those we wronged. We owe it to ourselves and we owe it to those interned.

Third, by setting up a public education fund we have taken measures to ensure that we will never again commit such an injustice. It would be far too easy to forget that act as part of our past. By keeping ourselves aware of this injustice we will prevent such a crime in the future.

Mr. Chairman, I applaud this bill and the actions it takes and urge my colleagues to vote for it.

Mr. TORRICELLI. Mr. Chairman, I rise in strong support of H.R. 442, the Civil Liberties Act of 1987. The internment of Japanese-Americans on the west coast during the Second World War is a blemish on the United States' treatment of its citizens. The constitutional rights of an entire American ethnic group were violated because of the action of their native country.

The loyalty of individual Americans, of a whole community of Americans was questioned without due regard to the law. In 1942, our country succumbed to racial prejudice and wartime hysteria and abandoned the Constitution, the document we celebrate today, to deprive the basic civil rights of over 100,000 Americans of Japanese ancestry.

The Civil Liberties Act of 1987 is designed to remedy this grave injustice. Congressional passage of this legislation would put our Government on record acknowledging that its actions in 1942 were carried out without sufficient security reasons and were motivated in part by racial prejudice and wartime hysteria. Congress would go on record as making an

apology on behalf of the Nation to those who were interned.

This act also establishes a trust fund of $1.25 billion to be used for payments of $20,000 for each Japanese-American deprived of his or her constitutional liberties and for educational and humanitarian purposes on behalf of the ethnic Japanese community in the United States. While the level of financial compensation to Japanese-Americans who were interned may be inadequate, the restitution payments provided for in this act represent a strong affirmation by Congress that a mistake was made.

Finally, by passing this act, we provide for further study of the causes and effects of the evacuation of the Japanese-American community on the west coast. History cannot be undone, but we can learn its lessons. We can affirm that the principles and rights contained in the Constitution will never again be abandoned or abridged.

Mr. BOSCO. Mr. Chairman, as an original cosponsor of H.R. 442, the Civil Liberties Act of 1987, I am proud to rise in strong support of this long overdue legislation. Today, as we observe the 200th anniversary of the signing of the U.S. Constitution, it is fitting that we should consider this legislation that begins to redress the profound personal injustices inflicted upon loyal Americans more than 40 years ago. Adoption of this measure not only attempts to compensate Americans of Japanese ancestry who were interned during World War II, but it also reaffirms, in a meaningful way, our faith in the fundamental constitutional principles of liberty and justice for all.

In February of 1942, 2 months after the bombing of Pearl Harbor, some 120,000 persons of Japanese ancestry were evacuated from the west coast of the United States, without trial or jury, and confined to detention camps in desolate areas. Undertaken ostensibly for reasons of military security, this policy of evacuation and internment was carried out despite the fact that no American of Japanese ancestry was ever charged or convicted of any acts of treason or disloyalty. Moreover, no Americans of Italian or German descent were similarly removed or deprived of their civil and constitutional rights. Sadly enough, this shameful policy was motivated entirely by racial prejudice and war hysteria.

The financial and emotional losses suffered by these individuals were staggering. Most lost their homes, farms, possessions, and businesses. But the deprivation of personal freedoms and dignity may be the most enduring loss. Mr. Speaker, the formal apology and payment of $20,000 to each surviving victim provided for under H.R. 442 can never fully or fairly compensate these loyal Americans, but as a Nation that values its democratic principles above all, we are morally bound to reconcile this painful chapter in our history. Passage of H.R. 442 is an essential step toward that end, and I strongly urge my colleagues to join with me in approving this important measure.

Mr. KOSTMAYER. Mr. Chairman, I rise today in support of H.R. 442, the Civil Liberties Act of 1987. This legislation is of great importance to the 120,000 Americans of Japanese ancestry who were held against their will in forcible confinement during World War II.

Mr. Chairman, the legislation before us today would authorize a tax-free $20,000 restitution payment to those who were interned. Anyone acepting the restitution would be required to waive any claim against the Federal Government related to wartime relocation and internment. The Attorney General would be responsible for identifying, locating, and making the payments to eligible individuals.

Most importantly though, Mr. Chairman, this legislation would apologize on behalf of the people of the United States for the evacuation, relocation, and internment of persons of Japanese ancestry during World War II.

Mr. Chairman, some of my constituents in Bucks and Montgomery Counties were interned in these camps. Mr. Ben Ohama, of Willow Grove, PA, was 24 years old when he was forced to relocate from his home in Fresno, CA. He was sent to Poston, AZ, with his family where he was held for a year and a half. When he was released from the camp he came to the defense of his country and fought in the U.S. Army from 1944 to 1946.

Mr. George Nakashima, of New Hope, PA, was also interned in these camps, Mr. Speaker, In 1942 Mr. Nakashima was sent with his wife and 6-week-old daughter to an assembly center in Portland, OR. Mr. and Mrs. Nakashima were forced to raise their infant child in a former livestock building with 4,000 other internees for 3 months. They were then sent to a relocation center near Hunt, ID, where they were interned for over a year. Mr. Nakashima has since received the Order of the Sacred Treasure, 3d class, an honor bestowed for greatly contributing to United States-Japanese relations.

Mr. Ohama and Mr. Nakashima are loyal Americans, Mr. Chairman. They and the 119,998 other Americans of Japanese ancestry should not have been interned during World War II.

The passage of H.R. 442 is long overdue. I urge my colleagues to vote in favor of this legislation. Japanese-Americans deserve nothing less than an apology and redress for the loss of their constitutional rights.

One can make up a variety or arguments to oppose this bill. Yet no argument outweighs the need to redress the terrible injustice and the wholesale abrogation of rights of the evacuation and internment.

An injustice, terrifying in its scope and depth, was committed by our Nation's Government. The question is, What is our responsibility now to deal with such a shameful episode?

Some would say that it is too late, that we should not second guess the past, that people today cannot understand the hysteria of the time.

But is that our policy—not to judge the past? Then truly we will be condemned to repeat the folies we commit. A wise nation knows that if it is to have a future, it must examine and acknowledge its past—both its days of pride and days of shame.

Our Nation was scared, yes, but is that a reason to crush the very freedoms for which we were fighting? Show me the footnote in our Constitution which claims, "Not valid when the going gets tough." The words chiseled in the marble of the Supreme Court Building say, simply, "Equal Justice Under Law," not "Equal justice under law except when things get sticky."

Some people oppose this bill because they actually confuse the Imperial Government of Japan with Americans who happen to be of Japanese ancestry. And people are still making that mistake today. This bill has nothing to do with the nation or people of Japan. It deals with how the U.S. Government treats its own citizens.

It is said that war demands sacrifices of its citizens. That is true. And no sacrifices were braver than those made by the American soldiers of Japanese ancestry who laid down their lives for the very rights which they and their families had been denied. These soldiers fought valiantly for their country at the same moment that their Nation was holding their loved ones behind barbed wire and machineguns. That is a sacrific beyond measure.

However, the sacrifices which a great nation asks do not include the abandonment of the very rights which its citizens are fighting to uphold. The internment and evacuation were not sacrifices that were the Government's to demand; they were illegal and unnecessary violations of the individual rights which we hold dearest.

The United States did not impose such punitive measures on its residents who were of Italian or German ancestry. Those men and women, those toddlers and grandmothers and grandfathers, did not suffer wholesale scrutiny and distrust. They were not shipped off to prisons en masse.

Some say the camps were for our protection. If that was so, why were the machineguns pointing in at us?

Some are concerned about setting a precedent. What an odd argument—to say that we had better not do something that is right, because we might set a precedent. But you and I know that H.R. 442 will not do so. And the precedent we will affirm if we do not act is a vile one.

If we do not pass H.R. 442, we will be supporting the precedent that our Government is free to round up its citizens on the basis of race, hysteria, and suspicion. If we do not vote for H.R. 442, we are saying that the Bill of Rights can be suspended at will.

This legislation is not just for those who were directly affected, though it is important that the stain of suspicion they have borne for a generation be erased.

H.R. 442 is for all Americans, including those yet to be born. Let us leave them a legacy in which we are strong enough to admit our wrongs. Let us prove that we do not shrink from the responsibilities that a nation shoulders for its actions. We cannot refuse to uphold our most cherished liberties.

Mr. Chairman, today let us take a giant step toward the ideal of "Equal Justice for all" by dealing bravely and forthrightly with the past. I urge you to vote for H.R. 442.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment, in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and said committee

amendment in the nature of a substitute is considered as having been read.

Amendments printed in Report No. 100-301 accompanying House Resolution 263 are considered as having been adopted in the House and in the Committee of the Whole.

The text of the committee amendment in the nature of a substitute, as amended, is as follows:

H.R. 442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Liberties Act of 1987".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens;

(3) provide for a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the recurrence of any similar event;

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) discourage the occurrence of smiliar injustices and violations of civil liberties in the future; and

(6) make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.

SEC. 3. STATEMENT OF THE CONGRESS.

The Congress recognizes that, as described by the Commission on Wartime Relocation Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons, and were motivated in part by racial prejudice and wartime hysteria. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.

SEC. 4. REMEDIES WITH RESPECT TO CRIMINAL CONVICTIONS.

(a) REVIEW OF CONVICTIONS.—The Attorney General is requested to review any case in which an individual living on the date of the enactment of this Act who, while a United States citizen or permanent resident alien of Japanese ancestry, was convicted of a violation of—

(1) Executive Order Numbered 9066, dated February 19, 1942,

(2) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173), or

(3) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action made by or on behalf of the United States or its agents, representatives, officers, or employees respecting the exclusion, relocation, or detention of individuals solely on the basis of Japanese ancestry,

on account of the refusal by such individual, during the evacuation, relocation, and internment period, to accept treatment which discriminated against the individual on the basis of the individual's Japanese ancestry.

(b) RECOMMENDATIONS FOR PARDONS.—Based upon any review under subsection (a), the Attorney General is requested to recommend to the President for pardon consideration those convictions which the Attorney General considers appropriate.

(c) ACTION BY THE PRESIDENT.—In consideration of the statement of the Congress set forth in section 3, the President is requested to offer pardons to any individuals recommended by the Attorney General under subsection (b).

SEC. 5. CONSIDERATION OF COMMISSION FINDINGS BY DEPARTMENTS AND AGENCIES.

(a) REVIEW OF APPLICATIONS BY ELIGIBLE INDIVIDUALS.—Each department and agency of the United States Government shall review with liberality, giving full consideration to the statement of the Congress set forth in section 3, any application by an eligible individual for the restitution of any position, status, or entitlement lost in whole or in part because of any discriminatory act of the United States Government against such individual which was based upon the individual's Japanese ancestry and which occurred during the evacuation, relocation, and internment period.

(b) NO NEW AUTHORITY CREATED.—Subsection (a) does not create new authority to grant restitution described in that subsection, or establish new eligibility to apply for such restitution.

SEC. 6. TRUST FUND.

(a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States the Civil Liberties Public Education Fund, to be administered by the Secretary of the Treasury.

(b) RESPONSIBILITIES OF THE SECRETARY OF THE TREASURY.—

(1) INVESTMENT.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price, or

(B) by purchase of outstanding obligations at the market price.

(2) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(3) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(c) USES OF THE FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 7 and by the Board under section 8.

(d) TERMINATION.—The Fund shall terminate not later than the earlier of the date on which an amount has been expended from the Fund which is equal to the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, or 10 years after the date of the enactment of this Act. If all of the amounts in the Fund have not been expended by the end of that 10-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund $1,250,000,000. Any amounts appropriated pursuant to this section are authorized to remain available until expended, except that any funds appropriated for payments by the Attorney General under section 7 shall be used for such payments during the fiscal year in which the funds are first made available.

SEC. 7. RESTITUTION.

(a) LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subject to subparagraph (4), the Attorney General shall pay out of the Fund to each eligible individual the sum of $20,000, unless such individual refuses to accept the payment. The Attorney General shall, within 9 months after the date of the enactment of this Act, identify and locate, without requiring any application for payment and using records already in the possession of the United States Government, each eligible individual. Failure to be identified and located within such 9-month period shall not preclude an eligible individual from receiving payment under this section. Any eligible individual may notify the Attorney General that such individual is an eligible individual, and may provide documentation therefor. The Attorney General shall designate an officer or employee to whom such notification and documentation may be sent. The Attorney General shall, when funds are made available for payments to an eligible individual under this section, notify that eligible individual of his or her eligibility for payment under this section.

(2) EFFECT OF REFUSAL TO ACCEPT PAYMENT.—If an eligible individual refuses to accept any payment under this section, the amount of such payment shall remain in the Fund and no payment may be made under this section to such individual at any time after such refusal.

(3) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The payment to an eligible individual under this section shall be in full satisfaction of any claim of such individual against the United States arising out of acts done to that individual that are described in section 10(2)(B). This paragraph shall apply to any eligible individual who does not refuse to accept payment under this section within 6 months after receiving the notification from the Attorney General referred to in the last sentence of paragraph (1).

(4) EXCLUSION OF CERTAIN INDIVIDUALS.—No payment may be made under this section to any individual who, after September 1, 1987, is awarded a final judgment or a settlement on a claim of such individual against the United States for acts done to that individual that are described in section (10)(2)(B).

(b) ORDER OF PAYMENTS.—The Attorney General shall endeavor to make payments under this section to eligible individuals in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals have received payment in full.

(c) RESOURCES FOR LOCATING ELIGIBLE INDIVIDUALS.—In attempting to locate any eligible individual, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record, document, or information that may be made available to the Attorney General.

(d) NOTIFICATION AND DOCUMENTATION BY ELIGIBLE INDIVIDUALS.—Any eligible individual who, by September 30, 1989, has not received payment under this section from the Attorney General or has not otherwise been notified by the Attorney General for purposes of payment under this section, may notify the Attorney General that such individual is an eligible individual and may provide documentation therefor. The Attorney General shall designate an officer or employee to whom such notification and documentation may be sent.

(e) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(f) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease with the termination of the Fund.

(g) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering, and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

SEC. 8. BOARD OF DIRECTORS OF THE FUND.

(a) ESTABLISHMENT.—There is hereby established the Civil Liberties Public Education Fund Board of Directors which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) USES OF FUND.—The Board may make disbursements from the Fund only—

(1) to sponsor research and public educational activities, and to publish the hearings and findings of the Commission, so that the events surrounding the evacuation, relocation, and internment of the United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood; and

(2) for reasonable administrative expenses of the Board, including expenses incurred under subsections (c)(3), (d), and (e).

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Board shall be composed of 9 members appointed by the President, by and with the advice and consent of the Senate, from individuals who are not officers or employees of the United States Government.

(2) TERMS.—(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of 3 years.

(B) Of the members first appointed—

(i) 5 shall be appointed for terms of 3 years; and

(ii) 4 shall be appointed for terms of 2 years, as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of such member's term until such member's successor has taken office. No individual may be appointed as a member for more than 2 consecutive terms.

(3) COMPENSATION.—Members of the Board shall serve without pay, except that members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) QUORUM.—5 members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) CHAIR.—The Chair of the Board shall be elected by the members of the Board.

(d) DIRECTOR AND STAFF PERSONNEL.—

(1) DIRECTOR.—The Board shall have a Director who shall be appointed by the Board.

(2) ADDITIONAL STAFF.—The Board may appoint and fix the pay of such additional staff as it may require.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The Director and the additional staff of the Board may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Board may not exceed a rate equivalent to the minimum rate of basic pay payable for GS-18 of the General Schedule under section 5332(a) of such title.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services is authorized to provide to the Board on a reimbursable basis such administrative support services as the Board may reasonably request.

(f) GIFTS AND DONATIONS.—The Board may accept, use, and dispose of gifts or donations of services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORTS.—Not later than 12 months after the first meeting of the Board and every 12 months thereafter, the Board shall transmit to the President and to each House of the Congress a report describing the activities of the Board.

(h) TERMINATION.—90 days after the termination of the Fund, the Board shall terminate and all obligations of the Board under this section shall cease.

SEC. 9. DOCUMENTS RELATING TO THE INTERNMENT.

(a) DEPOSIT OF DOCUMENTS IN NATIONAL ARCHIVES.—All documents, personal testimony, and other material collected by the Commission during its inquiry shall be delivered by the custodian of such material to the Archivist of the United States who shall deposit such material in the National Archives of the United States. The Archivist shall make such material available to the public for research purposes.

(b)(1) PUBLIC AVAILABILITY OF CERTAIN RECORDS OF THE HOUSE OF REPRESENTATIVES.—The Clerk of the House of Representatives is authorized to permit the Archivist of the United States to make available for use records of the House not classified for national security purposes, which have been in existence for not less than thirty years, relating to the evacuation, relocation, and internment of individuals during the evacuation, relocation, and internment period.

(2) This subsection is enacted as an exercise of the rulemaking power of the House of Representatives, but is applicable only with respect to the availability of records to which it applies, and supersedes other rules only to the extent that the time limitation established by this section with respect to such records is specifically inconsistent with such rules, and is enacted with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

SEC. 10. DEFINITIONS.

For the purposes of this Act—

(1) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946;

(2) the term "eligible individual" means any individual of Japanese ancestry who is living on the date of the enactment of this Act and who, during the evacuation, relocation, and interment period—

(A) was a United States citizen or a permanent resident alien; and

(B) was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones," approved March 21, 1942 (56 Stat. 173); or

(iii) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States or other action made by or on behalf of the United States or its agents, representatives, officers, or employees respecting the exclusion, relocation, or detention of individuals solely on the basis of Japanese ancestry;

except that the term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country;

(3) the term "permanent resident alien" means an alien lawfully admitted into the United States for permanent residence;

(4) the term "Fund" means the Civil Liberties Public Education Fund established in section 6;

(5) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 8; and

(6) the term "Commission" means the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act.

SEC. 11. COMPLIANCE WITH BUDGET ACT.

No authority under this Act to enter into contracts or to make payments shall be effective except to the extent or in such amounts as are provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal year 1989 and thereafter.

AMENDMENT OFFERED BY MR. LUNGREN

Mr. LUNGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LUNGREN: Page 3, line 25, strike out "and wartime hysteria" and insert in lieu thereof ", wartime hysteria, and a failure of political leadership".

Mr. LUNGREN. Mr. Chairman, I would say that this amendment would bring the statement of Congress in this legislation contained in section 3 into conformity with the findings of the Commission on Wartime Relocation and Internment.

The Commission found that the broad historical causes that shaped these decisions were race prejudice, war hysteria, and the failure of political leadership. Unfortunately, the committee bill has dropped the "failure of political leadership" as one of the underlying causes of the relocation and internment.

In my estimation this is belied by the overwhelming weight of historical evidence on this question.

As I indicated before, this was a decision made by Franklin Delano Roosevelt after he had the advice of his counselors. He had various bits of information in front of him. I think that it is difficult, putting yourself in his shoes, to condemn his actions at that time. I think where a larger condemnation would come into place was his reluctance to remove the Executive order at an earlier date. There is evidence in some letters, some correspondence with the President, that he did not allow the Executive order to be lifted as soon as it could have been because of fear of the consequences of the upcoming congressional elections and the impact of his party at that particular time. That, I think, is a failure of political leadership.

What I would like us to do in this situation is to get the complexity of the situation before us, a full amplification of that.

A little earlier, Mr. Chairman, I made reference to several MAGIC cables.

Let me give you an idea of some of the things that the President had before him at that time.

Let me just mention a couple of other MAGIC cables that were before the President so that we have a fuller understanding of the historical record. They said, and this cable was from the Seattle Japanese consulate to Tokyo at one point:

We are using foreign company employees as well as employees in our own companies here for the collection of intelligence having to do with economics along the lines of the construction of ships, the number of airplanes produced and the various types, the production of copper, zinc and aluminum, the yield of tin for cans and lumber. For the future we have made arrangements to collect intelligence from second generation Japanese draftees on matters dealing with troops as well as troop speech and behavior.

Another cable, from the Los Angeles Council to the Government of Japan in Tokyo: "We are doing everything in our power to establish inside contact in connection with our efforts to gather intelligence materials." Further on it continues, "We plan to establish very close relationships with various organizations and in strict secrecy have them keep these military establishments under close surveillance. Through these means we hope to obtain accurate and detailed intelligence reports. We have already established contact with absolutely reliable Japanese in the San Pedro and San Diego area," both of those areas in southern California along the coast, "who will keep a close watch on all shipments of airplanes and on other war materials and report the amounts and destinations of such shipments. The same steps have been taken with regard to traffic across the United States-Mexico border. We shall maintain connection with our second generation who at present are in the U.S. Army, to keep us informed of various developments in the Army. We also have connections with our second generation working in airplane plants for intelligence purposes. With regard to the Navy, we are cooperating with our naval attaché's office and submitting reports as accurately and as speedily as possible." Then there are a number of other cables in the same regard.

The point I am trying to make is this: as we look back on the decision that was made, we have to recognize the information that was available to the President at that time.

In retrospect we know those cables were in error. They were wrong. For what reason they were wrong we do not know. Whether it was somebody in the employ of the Japanese Government here puffing his position or what he had done or whether they in fact thought they had made those contacts or whatever, we do not know. All we know is that the President of the United States at that time was confronted with it.

My particular amendment would just offer the question on the element of political leadership in the full context of the decisionmaking process. It seems to me if we take this out we make the historical record less than what it is. We reject a major finding of the Commission. And I think we do so in a way that is not accurate.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. Yes, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I thank the gentleman for yielding. Mr. Chairman, the gentleman is a real scholar on this subject. I think he makes a very relevant point. he puts the bill back to where it was sort of originally but with a very important context. I hope his amendment is accepted.

Mr. SHAW. Mr. Chairman, I move to strike the last word.

Mr. Chairman, in the committee and in the subcommittee, I supported an effort to delete the language that the gentleman is attempting to put back in the bill. After listening to his presentation and knowing of his background and knowledge of this particular subject and pursuit of historic accuracy, I too join the gentleman from Massachusetts in accepting the language.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. LUNGREN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. LUNGREN

Mr. LUNGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LUNGREN: Page 3, strike out lines 10 and 11 and redesignate the succeeding paragraphs accordingly.

Page 4, lines 4 and 5, strike out "for which appropriate compensation has not been made".

Page 7, lines 9 and 10, strike out "by the Attorney General under section 7 and by the Board under section 8" and insert in lieu thereof "by the Board under section 7".

Page 7, line 23, strike out "$1,250,000,000" and insert in lieu thereof $50,000,000".

Page 7, line 25, strike out ", except that" and all that follows through page 8, line 3 and insert in lieu thereof a period.

Page 8, strike out line 4 and all that follows through page 11, line 7, and redesignate the succeeding sections accordingly.

Page 17, line 10, strike out "8" and insert in lieu thereof "7".

Mr. LUNGREN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LUNGREN. Mr. Chairman, I suppose this might be considered the important amendment, at least if the debate thus far is any guide.

This amendment would delete one of many sections of the bill. My amendment would strike the language providing restitution for eligible individuals in section 7 of the bill. The effect of this would be to reduce the amount to be appropriated to the fund in section 6 by $1.2 billion leaving $50 million for public education purposes.

As I have said before, let me be clear that the history of the period leaves little room for doubt. I believe that an injustice was done when the U.S. Government implemented Executive Order 9066 compelling the internment of nearly 120,000 Japanese-Americans and resident aliens living on the west coast.

In the 96th Congress I was honored to be an original cosponsor of H.R. 5499 which established the Commission on Wartime Relocation and Internment of Civilians.

It was clear that in creating the Commission there was no understand-

ing that the main or chief purpose was to provide monetary redress. In fact, many of the most ardent proponents of the legislation which gave rise to the Commission went to great lengths to assure us that this was not the case. This is illustrated by testimony before the Senate Committee on Governmental Operations by Mr. William Hori, a proponent of reparations. In his statement to the committee he indicated that a primary cosponsor of the legislation in the Senate had said that:

The only condition I made the other four Members of Congress to agree to was no monetary reparations would ever be asked. If they had not agreed I would not have endorsed the bill.

Certainly this body has a right to make an independent judgment on this matter. But in my estimation it is an expensive distraction from the seriousness of this tragic episode in our Nation's history.

Mr. Chairman, I find it difficult to accept the argument that unless we have money attached to what we are doing today it has no significance, it is not sincere, it is not genuine; for if that had been the argument the very bill creating the Commission to investigate this whole episode in our Nation's history would never have been passed. At that time at least one major proponent of the bill establishing the Commission made it very clear that if the purpose of the bill was individual reparations he would not support that bill. He was assured by proponents in the Congress and out of the Congress that that was not the case. If that was their position, that is, the proponents of the bill at that time, that in fact they considered it an important gesture to have an investigation of this episode to create an accurate historical record and hopefully have an apology, why now do the proponents say that to do less than give money is either an act of insincerity or an act lacking substance or something which is nothing more than a hollow gesture?

You cannot have it both ways. If in fact the proponents accepted at that point in time that monetary reparations would have blocked consideration of this and they accepted that and thought, nonetheless, it would be an important thing for Congress to act in this regard, I find it difficult to understand now that it is a hollow gesture for us to act.

In this regard I find the rationale for reparations that is contained in the Judiciary Committee report to be, in my judgment, incredible. It states this:

Although a formal apology is important and the education fund is needed, these provisions alone without compensation will not insure or serve as a disincentive to us as a nation to prevent future denials of fundamental civil liberties.

So in other words, if you read the committee report the reason we must have monetary redress is as a disincentive for us to repeat these actions in the future.

I just want to ask this: Does anyone seriously believe that any future administration will be deterred from making a similar mistake because g' have required compensation 45 years after the fact when most of the people who were within the decisionmaking circle of the Federal Government have long since passed from governmental positions and most, if not all, have long since passed from the Earth? The threat of punishing my 11-year-old daughter 3 years from now would seem to me to do little in the way of encouraging my 14-year-old son now to mow the lawn.

I mean, if you are going to say that we are setting this up so that any future administration will avoid mistakes of this type because they fear 45 years after they have made the decision a future generation will be punished, I think that is folly. Yet I think that is the essence of the committee report if you look at their reasoning for the money damages.

Such an attenuated relationship between the commission of an act that is admittedly wrong and the sanctions related thereto have nothing to do with deterrence.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has expired.

(By unanimous consent Mr. LUNGREN was allowed to proceed for 5 additional minutes.)

Mr. LUNGREN. Mr. Chairman, I say it has nothing to do with deterrence, but everything to do with the misguided notion that the dollar sign is the only genuine symbol of contrition.

Ironically, the rationale of the Commission report itself eloquently undermines the recommendation for reparations in these words:

Two and one half years behind the barbed wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone, these injustices cannot be translated into dollars and cents. Some find such an attempt in itself a means of minimizing the enormity of these events in a constitutional republic. History cannot be undone. Anything we do now must inevitably be an expression of regret and an affirmation of our better values as a nation, not an accounting which balances or erases the events of the war that is beyond anyone's power.

Mr. Chairman, grave injustices are often the product of war. Whether we are talking about the loss of limb or life or the loss of property, the result is often agony and human suffering. As Cornelius Ryan has all too well documented, mistakes, admittedly terrible mistakes are made. From "The Longest Day" on the beaches of Normandy to "A Bridge Too Far" in Arnheim, war turns both logic and life upside down. The survival instinct does not always produce well conceived decisions when scrutinized with the benefit of 20-20 hindsight. The result is that lives are shattered and families permanently scarred.

I ask you this, Mr. Chairman, What do we say to the families of our men who died in Sicily not because they were killed by enemy fire but because our bombers mistakenly identified them as the enemy?

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Mr. Chairman, I fear the potentially grave consequences of extending the principle of restitution contained in this bill. Many of my colleagues on the other side of the aisle, as well as some on this, have argued that the denial of civil rights by Government can just as easily derive from Government inaction as from Government action. It is not too difficult to think of arguments concerning the need for recompense because of a time lag between Brown versus the Board of Education and the Swann versus Charlotte, North Carolina decision in 1971.

Attempting to put a price tag on misbegotten policies of the past poses the spectacle of unwieldy precedent. The principles of equity involve more than the satisfaction of wrongs in this specific case. Rather, similar treatment for those with similar grievances is required. American Indians and blacks are but two examples of possible claims to recompense under such elevated principles of retroactive justice.

In this country we have a statute of limitations for virtually every crime except murder. We have a statute of limitations for virtually every tort action. Why? Not because we do not think that a wrong was created, not that we do not think that someone was harmed, but because we believe there is a concern for finality, that at some point in time we cannot say to one generation, go back and try to make monetary amends for the previous generation.

We do that consistently in our law on the criminal side as well as on the civil side. If today we say 45 years is appropriate for extending the statute of limitations, why not 90 years? Why not 100 years? Why not 150 years?

This country, as great as it is, has imperfections. We have made mistakes. We have made grievous errors. Never have I thought that we used a bottom-line analysis of it to see if we would balance the fiscal board.

It is indeed folly to try to judge history as an evolving balance sheet. Do we really believe, as one of my fellow commissioners said, that nothing can be genuine unless it involves the coin of the realm? Have we reached such a state in our society that unless money is exchanged, the sincerity of our expression is brought into question? The

logic of materialistic reductionism in my judgment not only has the potential of demeaning the gravity of the experience at issue but of subsuming or overcoming the more important task of ensuring that future generations are taught the lessons to be learned from this ignominious episode in our Nation's history.

Mr. Chairman, this issue ought not to be over whether a certain person gets $20,000 or not. It ought to be an acknowledgment of error in the past, an establishment of an educational fund so that we can continue to study this episode, take lessons from it, and hopefully apply it to the future. That is the best bequest we can make to our children and our children's children, not the idea that unless they put a price tag on something, it is a worthless experience.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has expired.

(On request of Mr. DELLUMS, and by unanimous consent, Mr. LUNGREN was allowed to proceed for 3 additional minutes.)

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Chairman, I thank my colleague for yielding.

Mr. Chairman, I tried to listen with rapt attention to the gentleman's presentation. This gentleman from California is not an attorney, but I would like to speak to the question of economic recompense that the gentleman dealt with.

Back in the early 1970's this gentleman was speaking on the steps of the east front of the Capitol. Several thousand human beings had come to the Capitol to present a petition to myself and a few other colleagues calling for peace in Vietnam. All of those persons were arrested on the Capitol steps.

I brought a lawsuit. It became Dellums versus Powell, because Mr. Powell was the chief of the Capitol Police at that time. That lawsuit went through the entire court process to the Supreme Court of the United States. The Supreme Court of the United States acted on Dellums versus Powell. The decision that was made in the Federal courts was sustained through our entire appeal process to and through the U.S. Supreme Court. It said that not only were the first amendment rights of the persons on the Capitol steps violated, but those who were arrested found their fourth amendment rights were violated.

The Court also found that the first amendment rights of this gentleman, Mr. DELLUMS of California, were violated because I lost the group of people who came to redress their government by presenting the people's peace treaty to me.

In the first instance the judge and the jury ruled in Dellums versus Powell that all of those persons would receive in the aggregate $12 million. That meant that this gentleman, on the basis of the violation of the first amendment rights, was to receive $7,500. All of the other persons whose first amendment rights had been violated and who had been imprisoned overnight or for a day or two were to receive at least $10,000.

Now, what was clearly established, in my humble opinion, in Dellums versus Powell, though I am not an attorney, is that we have a history in this country of providing economic recompense where indeed the Government has violated the rights of its citizens. The only thing that was questionable in the initial ruling was whether or not the $12 million was an appropriate figure, not that economic recompense was in question. That had been dealt with. So they asked the original judge to go back and look at the issue. So they came out with a figure of $1.2 million.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has again expired.

(On request of Mr. DELLUMS, and by unanimous consent, Mr. LUNGREN was allowed to proceed for 3 additional minutes.)

Mr. DELLUMS. Mr. Chairman, if the gentleman will yield further, just as a quick aside, this gentleman did not take the resources. He gave the money to the ACLU so they could continue their fine efforts.

The point was that economic recompense is an integral part of the history of this country.

So I find the gentleman's argument on those grounds faulty. To suggest in some way that we somehow distort and prostitute the extraordinary principle of justice simply because we hang a price tag on it belies the history of the decisions of the courts of this land. This gentleman stands as a clear example of that in Dellums versus Powell.

Now, whether $20,000 or whatever is the appropriate figure, that is a judgment call. But as I have said many times on the floor of this Congress, we stand in an atmosphere of judgment. We are required to act, to decide whether it is $20,000 or $200,000 or whatever, but not that the principle should ever be challenged.

Mr. Chairman, I thank my colleague for his genorosity in yielding to me to simply make the response to the gentleman's argument on the question of economic recompense. I think it is wholly appropriate in this situation, and I will oppose the gentleman's amendment for the very reasons that I asserted in my argument.

The CHAIRMAN. The time of the gentleman from California [Mr. LUNGREN] has again expired.

(On request of Mr. DELLUMS, and by unanimous consent, Mr. LUNGREN was allowed to proceed for 3 additional minutes.)

Mr. LUNGREN. Mr. Chairman, I am happy to take this time to respond to the gentleman from California [Mr. DELLUMS] and I would like to make several points. The first point is that in the instance the gentleman has suggested, he is correct that the court made the determination that there was an unconstitutional deprivation of rights in his particular case. That is not the history of this incident.

The incident was challenged in the courts all the way to the Supreme Court, and it was the judgment of the Supreme Court at that time that Franklin Delano Roosevelt was within his constitutional powers as Commander in Chief to issue this order and to have it implemented. So in fact there was not a violation of constitutional rights as understood at that time.

The gentleman knows the argument now with respect to Mr. Bork in the other body is whether the Constitution is a continuing evolving document. Members of his side of the aisle generally accept that argument. At the time of the acts in question here it has evolved to such a point that in fact the President of the United States was within his constitutional rights, and, therefore, the constitutional rights of the individuals involved were not violated.

What we are doing now is looking back 45 years later. One of the reasons we have economic recompense in a case like that of the gentleman from California is not because there was a financial calculation that it was worth $7,500 for each person to be denied the amount of time they were to be given to consult with the gentleman on the steps of the Capitol, but in essence because that was considered a serious enough financial burden on the Government to be a deterrent to that conduct in the future. And there was a close connection between the violation of civil rights perpetrated by the Government and the penalty placed on the Government, so that those in power or those they represented were immediately punished.

That is very different from what we are talking about now. We are talking about an action that was reviewed by the Supreme Court 45 years ago and determined to be constitutional at that point. Now we are coming in 45 years later and saying, despite the fact that it was constitutional at that time, in retrospect we think it was wrong—incidentally I agree it was wrong—and, therefore, we are going to give recompense.

If we read the committee's own language, they say the reasoning for it is deterrence. I find that faulty reason-

ing. We are not going to deter somebody from action now by saying 45 years from now that other people unelected, maybe not even alive at this time, are going to suffer the consequences of the decisions we make.

So I think these are very, very different circumstances. What I am saying is, as we correct the historical record, as we make it abundantly clear that there was not disloyalty visited upon this country by any Japanese-American or any Japanese national here, as we make abundantly clear that any shadow of a doubt ought to be lifted, as we try to take the lessons out of that, that is the important thing we ought to be doing. Rather than by saying that the only way to judge the sincerity of our action is by the amount of money behind the dollar signs given to the individuals involved.

So I understand the gentleman's point. I think his point is absolutely relevant to his experience. I have tried to point out the vast difference between his experience and the experience we are judging now.

Mr. GLICKMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, American citizens of Japanese ancestry were imprisoned in the Second World War in this country not because of anything they had done but because of who they were.

It is interesting to note that we were at war with Germany and Italy as well, but German-Americans and Italian-Americans were not imprisoned during that war, and obviously there was a great deal of racial overtones in what was involved.

But I think the key issue here is that American citizens were incarcerated without due process of law because of the way they looked and because of their race.

I try to personalize it. My ethnic background was treated to a similar but far worse scenario in Western and Eastern Europe during the Second World War, and I have tried to imagine whether I, with my ethnic background, or Irish-Americans, Polish-Americans, German-Americans, French-Americans, or black Americans could have the same thing happen to them in America. And as we deal with this 200th anniversary of the Constitution, I say, no, probably not. It could not happen in America as long as due process of law is dealt with.

But a very, very serious wrong was perpetrated on a class of Americans, Japanese-Americans, during the Second World War, and regardless of the circumstances of why it happened, it is still something that we should insure never happens again. So the question is, How do we remedy this wrong that was done? That is the issue.

I believe the gentleman from California [Mr. LUNGREN], in good faith, believes the way to remedy the wrong is to apologize. I must say that we have talked about this issue before, and I have some sympathy for that standpoint, but I was the chairman of the subcommittee before the gentleman from Massachusetts [Mr. FRANK] was, and I listened to the hearings, and my own judgment is that a pure apology and no restitution is not enough.

Why? First of all, I think it depends on the seriousness of the wrong. A minor wrong committed by this government probably deserves no restitution.

□ 1220

A major wrong deserves something extra special. In this case we have an affirmative government action, not a negligent action, not a failure to act, but an affirmative government action to remove American citizens out of their homes and put them in prison camps during a period of time during the Second World War. That is a major, major wrong, and similar wrongs in today's circumstances, nonracially motivated, have resulted in very, very big judgments, big dollar judgments from the United States of America.

In my judgment without restitution, the seriousness is demeaned, the seriousness of this incarceration, not only for Japanese-Americans of today's generation who were in those camps, but for all Americans, particularly Americans who are in minority circumstances.

There is a sign on one of my courthouses that says, "What is Past is Prologue," and I think that is what we do today.

We provide for the future ways to avoid the pitfalls of the past. This issue is a test for the United States of America, the greatest country in the world, a test of historic magnitude. We will never tolerate the denial of due process again, so that Americans of Irish, Polish, French, Jewish, black, and Hispanic descent will know that being different, being different is no grounds to be separated without due process of law.

Now, if you can do this with an apology, that is fine; but it reminds me a little bit like the old contracts were in English law, and you would sign the contract; but without the seal, the contract would not be worth anything.

In my judgment, the money compensation is the seal, so that 30 and 40 and 50 years from now, people will know that the greatest country in history on the face of the Earth was good enough to provide a seal to end the wrong that was done to a class of American citizens.

Two hunderd years after the signing of the Constitution, I believe that we will be providing not only the apology, but the seal to ensure that this never happens again.

I hope my colleagues will reject the Lungren amendment. I know it is offered in good faith.

I have the greatest respect for the gentleman from California, but I think it is the wrong way to handle the matter.

Mr. DELLUMS. Will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Chairman, I thank the gentleman for yielding.

I want to take a brief moment and respond to the assertion of the gentleman from California [Mr. LUNGREN] in response to this gentleman's statement.

The thrust of my argument is that economic recompense in the face of injustice is an appropriate response. That injustice does not have to be denied in my humble opinion by the courts of this land. It does not have to be defined by the Supreme Court of this land.

I could be defined in a political context by the people of this land, and I believe that the overwhelming response of the people of this land is that this is with justice, economic recompense.

The CHAIRMAN. The time of the gentleman from Kansas [Mr. GLICKMAN] has expired.

(By unanimous consent, Mr. GLICKMAN was allowed to proceed for 30 additional seconds.)

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding to me.

I rise to express my strong support for H.R. 442, the Civil Liberties Act of 1987 and my opposition to the Lundgren amendment. I can think of no more fitting action for this body to take today, the bicentennial of the signing of our Constitution, than to pass this long overdue measure.

It is impossible to overstate the suffering to which over 120,000 Japanese-Americans were subjected when they were uprooted from their homes and their communities and compelled to live in mass detention camps. As a Californian, I personally know many people who endured this terrible loss of civil liberties, of property, even loss of innocent years of childhood. And we all are colleagues of two of the most distinguished Members of this body, who personally were detained in the camps with their families.

So this bill is our long overdue way of trying in a small, token fashion to apologize, and to make amends. But I find of almost equal importance what this bill does for the rest of us who did not suffer the terrible injustice.

How many Americans have tried to make sense of the internment camps, and have

concluded that there must be some unspoken exceptions to the ringing words of our Constitution and the Bill of Rights? And what price does that effort to reconcile the irreconcilable exact from our vigilance in protecting civil liberties and civil rights today?

How many Americans over the past 45 years have had their pride in our Nation as a beacon of human rights shaken by an acknowledgment of this stain on our national record?

We must approve H.R. 442 today not simply for Japanese-Americans, but for all Americans. And to my colleagues who argue that we are setting a costly precedent here today that we can ill afford, let me say God help us if we ever again undertake another policy like Executive Order 9066 that would warrant redress like our action today. That is what we truly cannot afford.

I salute the individual Japanese-Americans and their organizations who have worked so long and so hard to win approval of this measure. Their efforts have not been for themselves alone, but for us all. In that spirit, I urge passage of H.R. 442 on this historic day, in this historic 100th Congress.

Mr. SWINDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, across the street inscribed on the fresco of the Supreme Court Building are the words "Equal Justice Under the Law."

Yesterday afternoon we had the unique occasion, as Members of the 100th Congress, to stand on the plaza and hear the President of the United States close the ceremony there recognizing the bicentennial of the Constitution by leading us as a nation in the Pledge of Allegiance to the flag.

The closing words were "liberty and justice for all."

The essence of the debate here today can be distilled to two words: "liberty and justice."

The truth of the matter is the word "justice" means to do what is right. We pride ourselves as a nation in being a nation not of men, not of individuals, but of laws.

Incidentally, the law to which we refer is the Constitution, the supreme law of the land. For that law to be meaningful, it cannot be easily set aside. It cannot be set aside even under the most extraordinary circumstances, unless we follow the very methodology outlined in the Constitution itself.

There is no debate here today that the Constitution was summarily ignored. I, for one, do not think it is fruitful to go back in 20-20 hindsight and try to judge whether or not that particular judgment was justified or not justified, because the truth of the matter is, war is extraordinary; but I do think it is significant that the Subcommittee on Administrative Law and Governmental Relations of the full Committee on the Judiciary very frequently brings forth particular bills that are to address issues where the statute of limitations has run, where it may be res judicata, where there may be a whole proliferation of legal terms that says to that individual, your legal resource has for all intents and purposes exhausted.

What we do is, we look to the word "justice," and we try to do that which is right. Let me say that this is not an easy issue for this Congress to deal with. It is a very emotional issue, but I, for one, could not stand in the well, as I have done many times, talking about the Constitution, talking about being a strict constuctionist, and today stand here and say that when it comes to the 40,000 or 60,000 individuals that were summarily deprived of their fifth amendment rights, which says no person—notice, it does not say no person, unless the color of their skin happens to be white, nor does it say a person who happens to have already been born, as is the case, of course, with the unborn—the point is, it says no person shall be deprived of their life, their liberty, nor their property without due process of law.

There has been no due process of law here. Certainly the statute of limitations has run but that is not the point.

This body shares the unique ability to even 40 years after the fact redress that role.

I would close by saying, while it is easy to debate this issue academically, I would like to ask the Members to put it in a very personal frame of reference.

I would ask the Members to imagine just for a moment that you are a 19-year-old young man who is serving his country in a time of war abroad, and receive a letter that says your parents have just been picked up under an Executive order, and they are currently being imprisoned in a camp somewhere in the United States of America, and you ask why.

You are told, because a nation thousands of miles away declared war on our country, and because you happen to be remotely descended to that nation, we are going punish your parents. Certainly each Member would say that is not fair. What about their constitutional rights?

There is probably not a single Member of Congress that has not had the opportunity to address a group of immigrants who, because of the ceremony that they go through, are told the significance of becoming U.S. citizens.

The CHAIRMAN. The time of the gentleman from Georgia [Mr. SWINDALL] has expired.

(By unanimous consent, Mr. SWINDALL was allowed to proceed for 2 additional minutes.)

Mr. SWINDALL. One of the points that I always make when I address those groups of immigrants who are on that proud occasion becoming U.S. citizens is to say that from that moment forward, they share the most unique privilege in the world; and that is, they are U.S. citizens with all of the rights, including the constitutional rights, attendant thereto.

If we as a body are desirous of doing what is right in this bicentiennial year of the Constitution, if we are desirous of fulfilling and satisfying the first responsibility our Founding Fathers gave to the Federal Government to establish justice, then it is incumbent on us to right this wrong.

Let me just say in terms of the dollar amount, it is $2,863 in 1945 dollars. Certainly that amount of money is, if anything, too little, not too much.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. SWINDALL. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I thank the gentleman for yielding.

I want to express my appreciation to the gentleman from Georgia at the subcommittee and full committee levels today, and for the gentleman's support for this legislation.

The gentleman has shown a great deal of thought, integrity; and I very much appreciate it. The bill is a better bill because of the work the gentleman did in subcommittee in amending some of the language, and I appreciate the gentleman's support here today.

Mr. SWINDALL. Mr. Chairman, one last point, and I would say it to my prolife friends who argue consistently that the Constitution guarantees the right not to be deprived of life or liberty or the pursuit of happiness without due process of law, that that is precisely the issue which we debate here today.

□ 1230

It is a very important point if we are to be consistent in our fight to make certain that those constitutional protections are recognized for all Americans, equal justice under the law.

Mr. MORRISON of Connecticut. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is obviously a proud day in the history of the United States as we celebrate the 200th anniversary of our Constitution. We could not have a more appropriate bill on the floor to be considering on that day than this piece of legislation. I am proud to have been a member of the Judiciary Committee and of the Subcommittee on Administrative Law when this bill has come before us to consider, because it is at once difficult in many ways, but the message that the Constitution sends to us is clear about what is right.

This is a bill to redress grievances for the deprivation of basic human rights that are recognized in our Constitution of individuals who are impris-

oned without cause and without process, deprived of their liberty, liberty which is protected by the United States Constitution, and more than that, singled out for this punishment for no other reason than their ethnic origin, singled out by racism, singled out by that most pernicious form of discrimination that can destroy society and destroy the people within it.

There is no question about the wrong that was done. The challenge is to respond to that wrong in an appropriate and effective manner. We all wish we could go back and do it over and get it right and never have the wrong occur, but we cannot; but that is no reason not to act now when we still have the power and ability to act and when those who suffered the indignity of that false imprisonment and that racist denial of liberty are still alive to hear the words of this Congress and to receive appropriate compensation.

This is a challenge on a great day to a great nation to have the strength that only a great nation can have to recognize when it is wrong and to try to correct its wrong no matter how late in the day that realization comes.

There is in this legislation an apology and a recognition of the causes which led to this injustice, and that is as it should be.

There is also in this legislation money to be paid to those individuals who claim it, who suffered this injustice, and that is as it should be also.

There is a great American expression used by all of us on many occasions, "Put your money where your mouth is." I think that fits this occasion.

The fact is that words are important and solemn words spoken by this body are important, but in America we all know that we deal also with things valued with money, and the willingness to pay compensation in dollars speaks about how absolutely clear we want to be about what is at stake.

There was a constitutional violation. The courts have held repeatedly that just the constitutional violation alone without any other losses is justification for compensation. In no way does the amount of money in this bill compensate individuals for months and years of lost liberty, of lost property. It is a very small amount, but it does say something very clear and it says something clear in the equality of the payment across people who suffered different amounts in different periods of time. It is an equality that says this Constitution is equal for all and deprivation of constitutional rights has a very special place in this Constitution.

It is an amount we can afford, but it will not be easy. We all know of our budget problems. It will cost us. We will feel it. We have said in this bill that it must respect the Budget Act and it must be in the budget process, and that means there will be a sacrifice, and that is appropriate, too. We as a nation are going to make a small sacrifice, to make what amounts to a small payment; but what we are going to say with that payment is not only that our words behind our apology and our recognition of the wrong, but our resources are, too.

We as a great nation really believe this Constitution that we celebrate today. We want it to have reality, not only in our words, but in the lives of the individuals whom we have hurt in the past by our actions.

So, Mr. Chairman, I rise in support of this legislation and in opposition to the pending amendment which would strike the monetary compensation. I think it is of a piece. It is of a whole and it reflects our commitment in the good old American understanding that we are willing to put our money where our mouth is when we have something important to say.

Mr. McCANDLESS. Mr. Chairman, I move to strike the requisite number of words and rise in support of the Lungren amendment.

Mr. Chairman, I rise in support of the amendment offered by my colleague from California, Mr. LUNGREN.

I join with most Americans who sincerely regret the economic, social, and emotional damage done to our fellow Americans of Japanese descent during World War II. However, while I support a formal apology to Japanese-American internees as well as restitution for specific, verifiable losses, I cannot agree that a blanket dispensation of $20,000 to every surviving internee is proper. In a sense, the money is "guilt" money to soothe the collective conscience of our Nation. No amount of money can rectify damage done 40 years ago.

Much has already been done for specific restitution of economic losses. In 1948, Congress passed the Japanese-American Evacuation Claims Act which allowed Japanese-Americans to claim and be compensated for personal property losses. Although not all losses could be verified, approximately $37 million was paid in claims. In 1972, the Social Security Act was amended so that Japanese-Americans over the age of 18 would be deemed to have earned and contributed to the Social Security system during their detention. The Federal civil service retirement provisions were amended in 1978 to allow Japanese-Americans civil service retirement credit for the time spent in detention after the age of 18.

Again, I emphasize that these actions have not "righted" a wrong committed 40 years ago, but neither will a $1.2 billion congressional appropriation. Japanese-Americans were not alone in suffering during World War II. Americans as a whole suffered economic losses and even death during the war. In my view, the best we can now offer surviving Japanese-American internees is the resolve that never again will such violations of basic rights occur in the United States. H.R. 442 does that, and I strongly support that portion of legislation. However, I cannot and do not support the portion of H.R. 442 that provides a $20,000 payment to each surviving internee. That portion of the legislation would have to be removed before I could vote for the passage of H.R. 442.

Therefore, I urge my colleagues to support the Lungren amendment.

Mr. YATES. Mr. Chairman, will the gentleman yield for a question?

Mr. McCANDLESS. Yes, I yield to the gentleman from Illinois.

Mr. YATES. Mr. Chairman, would the gentleman oppose compensation to American prisoners of war who had been in the Armed Forces?

Mr. McCANDLESS. For what reason?

Mr. YATES. Well, the fact is that this Congress voted to pay compensation to Americans who were prisoners of war during World War II and during the Korean war, for example. These are the equivalent of prisoners of war, were they not? Should they not be compensated for the time they were in the camps?

Mr. McCANDLESS. To the gentleman from Illinois, I do not like to get personal about this, but I was in the eye of the storm in the Los Angeles area during this period, and although looking back on it now I could not justify what took place at the time and under the circumstances, it seemed the right thing to do for both the individuals involved for their personal safety as well as that of the United States.

Mr. YATES. Mr. Chairman, will the gentleman yield further?

Mr. McCANDLESS. I yield to the gentleman from Illinois.

Mr. YATES. But, Mr. Chairman, here we are 45 years later, the storm has abated. We have a more rational approach. We know that what we did at that time was wrong in the heat of the emotion and in the fears that the war generated. Why then does the gentleman not change his mind at this time, now that the storm has abated, and permit some element, some measure of compensation for the people whom I am sure he recognizes as having been wronged?

Mr. McCANDLESS. Because I feel, as I said in my proposal, that soothing the conscience of the United States by giving someone $20,000, whether they spent 1 day or 3 years in internment, is not something that I can go along with.

Mr. HOYER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of H.R. 442. This measure is a long-overdue at-

tempt to atone for one of the most infamous incidents in our country's history. This legislation is aimed at correcting one of the most blatant and one of the most egregious violations of constitutional rights and safeguards. I would like to commend our majority leader, Congressman TOM FOLEY, for sponsoring this legislation. In addition, I would like to acknowledge the endeavors of two of our colleagues of Japanese-American heritage, Congressman BOB MATSUI and Congressman NORM MINETA. Both men have offered eloquent and deeply moving statements about their own experiences and those of their families in the internment camps.

I have already stated that this measure, which includes a formal apology to Japanese-Americans on the part of the Congress, and a system of compensation, is much belated. In hindsight, we can now see that the military "necessity" for the forced "evacuation" and "relocation" of more than 100,000 Japanese-Americans was nonexistent. At the time, many acquiesced in this dreadful denial of the most basic procedural rights and freedoms afforded by the Constitution, a document we are justly praising and celebrating this week. It is fitting that as we mark the bicentennial of the signing of the Constitution, we remember the incarceration of more than 100,000 men, women, and children in internment camps.

Rather than recount the legacy of discrimination and distrust that led to the establishment of the squalid internment camps, I would prefer to focus on a less well-known aspect of the Japanese-American experience in our country. It is ironic that at the same time that the United States Government moved native-born Americans as well as Japanese immigrants who thought of themselves as Americans to internment camps, thousands of other Japanese-Americans served honorably and courageously in the Armed Forces of the United States. Even if no Japanese-Americans had volunteered for military service during the Second World War, H.R. 442 would be an entirely appropriate response to a painful and humiliating experience for Japanese-Americans.

In fact, however, several thousand men of Japanese-American roots served so honorably and courageously that their units received the highest number of decorations and citations per man of any unit in the history of our country. These units were the 100th Battalion of the Hawaii National Guard and the 442d Regimental Combat Team, comprising the 442d Infantry Regiment, the 552 Field Artillery Battalion, and the 232d Engineer Battalion. An additional 6,000 Japanese-Americans, serving in the military intelligence service, saw duty in the Pacific theatre of operations primarily as interpreters.

While their families and friends were uprooted and separated from their homes, these brave men unmistakably demonstrated the loyalty and patriotism of Japanese-Americans. The men of the 442d Regimental Combat Team and other Japanese-Americans who served in the Armed Forces were "NISEI." They were second-generation Americans born to Japanese parents who had moved to this country.

More than 33,000 Nisei wore the uniform of the United States. In this military service, they risked their lives for the same country that had basically imprisoned their families and friends. More than 35 percent of these men became casualties. Approximately 1,000 died in combat.

The legendary 442d Regimental Combat Team, with its "Go for Broke" motto, fought valiantly in North Africa, Italy, and France. Among its heroic deeds, the 442d, while suffering 800 casualties in the process, including 200 dead, rescued the 211 surviving members of the 2d Battalion, 141st Infantry of the All-Texan 36th Division. This would be a pyrrhic victory, except to the members of the "Lost Battalion," trapped by overwhelming forces within German-occupied southern France.

At no time did the total manpower of the 442d top 4,500 men. However, this unit received more than 18,000 individual decorations, including a posthumous Medal of Honor; 52 Distinguished Service Crosses; 500 Silver Stars; 5,200 Bronze Stars; and 9,486 Purple Hearts. The 442d earned seven Presidential unit citations. In addition, members of the 442d Regimental Combat Team received decorations from 18 allied nations, including the French Croix de Guerre and the Italian Croce al Merito di Guerra.

Mr. Chairman, as the House of Representatives debates H.R. 442, let us pause to consider the Congressional Medal of Honor citation for Private First Class Sadao S. Munemori. This medal, our country's highest military accolade, was awarded posthumously. The citation reads:

[Munemori] took over his squad after the squad leader was wounded.

After some extremely heavy fighting, Munemori worked his way back toward his squad, followed by bursting grenades.

As he neared the crater where his men were waiting, a grenade bounced off his helmet and rolled into the crater.

Without hesitation, Munemori dove on the grenade and smothered the explosion. He was killed. His two squad members escaped with their lives.

When President Harry S. Truman tied the last of seven streamers commemorating Presidential unit citations to the colors of the 442d Regimental Comat Team, he said, "You fought not only the enemy, but prejudice, and you won." President Truman was not entirely correct. This second battle, the one against prejudice, is not over.

Mr. Chairman, the 442d Regimental Combat Team and the thousands of other Nisei members of our Armed Forces fought the enemy on the far-flung battlefields of the Second World War. These men fought courageously, indeed heroically. They fought, often at a truly fearsome cost in lives and limbs. Let us remember their courage, their loyalty, and their patriotism. Remembering the injustices endured by these men, their families, and their friends, merely because of their ancestry, I ask the House of Representatives to pass H.R. 442. Let us "Go for Broke" and say we remember, we are sorry, and we are grateful.

Mr. Chairman, I also rise in opposition to the amendment that is pending before us to combine with an admission that this was a black day in the history of America, in the history of our country, in taking an action that clearly none on the floor of this House would now justify, would perhaps explain in the emotion of passion and prejudice that perhaps existed, but nevertheless, not justified.

Mr. Chairman, I will not repeat the history that some have fully explained, but I rise as Chairman of the Commission on Security and Cooperation in Europe, the Helsinki Commission, an act which all of us in this body strongly support, the provisions of which are discussed regularly on the floor of this House and they are discussed in the context of the Soviet Union and the Warsaw Pact nations, acting against individuals for the sole reason of their ethnic or cultural or religious heritage or background, and we rightly condemn that activity. It is clearly a violation of the provisions of the Helsinki final act.

If the Helsinki final act had been in existence in 1940, 1941, and 1942, our actions would have been clearly in violation of that act. It seems to me very appropriate that America stand up at whatever time, it is never too late, never too late to redress a wrong. It is never too late to attempt in some small way, however inadequate it may be, to compensate for that wrong; so I believe that when I as Chairman of the Helsinki Commission go, as I have gone over the last few months to Bulgaria and talked to the Bulgarians about how they are treating the Turkish minority in Bulgaria, about how they have forcibly tried to have them change their names, and in fact have succeeded, or when I go to Romania and talk to them about treating the Hungarian minority in Transylvania, or when I go to the Soviet Union and talk to them about allowing Jews to emigrate, allowing them to practice their cultural and religious background and heritage, that I will come from a country that says, "Yes, we are not perfect." We understand that, but we are prepared to stand up and say we have made mistakes and we want to make good to the extent we can. Financially we cannot make these people whole, but we can say we recognize the wrong it committed. We are sorry for that wrong, and because the gentleman from California and the gentleman from Georgia, poles apart on many issues, but in agreement on this very fundamental issue, that in America we believe that where there is a legal wrong and where there is damage, there ought to be compensation.

There are cases where no amount of compensation will make the wrong party whole, but it is basic to the American concept of fairness and justice that compensation in some degree is made.

So my colleagues, I would hope that we would reject the Lungren amendment, offered I know in the spirit of good will, but I think sending a very

bad message, not only to those whom we have wronged, but very frankly, to those around the world who want to know whether America does in fact stand for the principles that it so eloquently talks about on this floor and around the world. We are not only sorry for a grievous wrong, but we also want to know that in some small way we are prepared to take some of our treasure and apply it to redressing that wrong.

□ 1245

That is right and proper that we do so. Support the passage and oppose the amendment to diminish the action that we take today.

Mr. PACKARD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by my colleague, the gentleman from California.

Mr. Chairman, I must preface my remarks by expressing my deep affection and admiration for the two gentlemen from California who are the primary sponsors of this legislation. I consider Mr. MINETA and Mr. MATSUI two of the most responsible and effective legislators in this body. I can think of no one with whom I more reluctantly oppose. Yet, I rise in opposition to portions of this bill.

My colleagues, there are few in this House that followed the events of World War II as they unfolded more carefully than I did. The rights of Japanese-Americans were not treated with the same respect that the rest of our citizens were during World War II. We all agree that injustices were inflicted upon them. Looking back we may wish that we would have done things differently. But President Roosevelt, the Congress, and the courts, did what they, at the time and under the circumstances, felt was the right thing to do.

War, by its very nature, creates an environment where injustices are commonplace. During our history, millions of Americans, even some living and working today, have suffered injustices, have had their civil and personal rights trampled on. Almost all, however, only wish to have these injustices recognized and their civil rights restored. There is not enough money in the Treasury to repay for all the injustices our citizens have sustained.

May I indulge the House with a personal experience during World War II. I was raised in a family of 17 children. My father was a simple carpenter and farmer. We were a very poor family. In 1941, we were about to lose our small farm in Idaho. It was decided my father would accept a job working for a Government contractor to build an airbase on Wake Island in the Pacific. The contract read that workers would be paid from the time they left San Francisco until the time they returned. The contract, of course, didn't anticipate war. Wake Island, as many of you know, was bombed the same day as Pearl Harbor. The island fell 15 days later and dad, along with 1,500 other workers, was taken prisoner. The money stopped coming to the family when he was taken prisoner. I was 10 at the time and 15 when he was released at the end of the war.

No money came for 2 years. Finally, Congress passed a bill that paid $100 a month to the families of prisoners. That didn't even make the payment on the farm, much less feed and clothe the family. At the end of the war there was no back pay, only a token settlement of the contract. An injustice, of course. There are literally hundreds of thousands of families like ours who sustained injustices from wars. Would we now ask our Government or the Japanese Government to satisfy these injustices with a money settlement—never. It would demean a time when our family learned to work together, pull together, and pray together. Money cannot buy the lesson of that experience. That was the beginning of a typical American success story.

I ask my colleagues to support the Lungren amendment. It will appropriately recognize the injustices to our Japanese-American citizens during World War II but not demean that acknowledgment with a payoff. In our attempt to repair these injustices let's not create multitudes of other injustices. There are many deserving of the same treatment but will never get it. Our Japanese friends don't need it, many will not accept it. Our budget can not afford it. And most of you deep inside must feel we ought not to do it. I beg of you, vote for the Lungren amendment and if fails I reluctantly plead with you to vote against the bill.

Mr. PEASE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me say at the outset that I strongly support the statement of the Congress which forms the heart of the Judiciary Committee's bill. It is long overdue that Congress acknowledge the Nation's actions in the forcible evacuation and relocation programs and apologize to those Japanese-Americans who suffered as a result.

However, that I must oppose the bill's provision of cash restitution payments to those internees who are still alive. I believe that the provision of tax-free $20,000 payments under the bill is inconsistent with this country's traditional way to redress injuries.

The American legal system generally permits damages to be awarded in order to compensate an individual for the actual losses he or she experiences or in order to punish wrongdoers.

Our system of compensatory damages is based on the premise that we are capable of quantifying the loss suffered by the individual victim and ought to compel the wrongdoer to make restitution. The $20,000 offered under the bill is a purely arbitrary figure which does not attempt to distinguish among the degrees of injury suffered by the individuals involved.

Our legal system also employs the notion of punitive damages, which are meant for the sole purpose of penalizing the wrongdoer and presumably deterring similar behavior in the future. It does not seem to me that the restitution payments could be properly classified as punitive damages since they would impose no painful penalty on the Government nor would they serve as any additional deterrent to similar actions.

Thus, while I understand the generous impulse which gives rise to the restitution provision, I feel compelled to support the amendment of the gentleman from California.

Mr. YATES. Mr. Chairman, will the gentleman yield?

Mr. PEASE. Mr. Chairman, I am happy to yield to the gentleman from Illinois.

Mr. YATES. Mr. Chairman, suppose one of our constituents is wrongly arrested by the police? Does he not have a cause of action and is he not entitled to redress?

Mr. PEASE. He is.

Mr. YATES. How does that differ from what happened in this case?

Mr. PEASE. The court situation, if I may reclaim my time, the court seeks to determine the degree of damage and loss to that particular individual and rewards him for it.

Mr. YATES. Is that not what the Congress seeks to do in this case for wrongful arrest?

Mr. PEASE. No, it does not. The Congress does not seek to do it in this case. The Congress intends, seeks to grant an across-the-board $20,000 payment to each and every person regardless of the circumstances.

The $20,000 payment to each person affected and still living—without any regard to the particular circumstances of individual persons—does not pass the test of the legal principle of compensation for quantifiable loss. The $20,000 payment also does not pass the test of common sense. Does anyone think that $20,000 is adequate compensation for 3 years of internment? Of course not! The $20,000 payment is purely symbolic.

Similarly, the $1 billion cost of this bill surely will not be punitive in the sense of deterring the U.S. Government from such action in the future. That simply is not credible. If the U.S. Government does behave differently in the future—and I hope it will behave differently—it will not because

of a fear of having to pay reparations at some point in the distance future.

To conclude, I strongly support the apology to Japanese-Americans for the grievous error made by their Government. I cannot, however, support the cash restitution payments.

Mr. YATES. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, when I was first elected to Congress in 1948 the first bill I filed at that time was one which would grant the opportunity to become citizens to the Japanese emigrants, the Issei, who could not become citizens because of the then existing Oriental exclusion laws. It took 4 years for that law to be passed.

In 1952 the Congress passed the bill setting aside the Oriental exclusion laws and providing that no person should be deprived of the opportunity to become an American citizen because of race.

I was a cosponsor of the legislation which created the Redress Commission and I am a cosponsor of the bill before us today. It is a most important bill. This is the first major step this Nation can take in rectifying one of the most unconscionable violations of our Government of the civil rights of any people. Everyone, to whom I've spoken in the Congress considers the action taken by our Government at that time in incarcerating the entire west coast Japanese community behind barbed wire a most flagrant injustice. And the question the legislation raises is whether those who suffered as a result of that injustice are entitled to redress.

The people who were treated so shamefully were among the best model citizens of our community at the time when they were placed in the detention camps.

Obviously ours is a nation of immigrants, and among the immigrants who did so much for our Nation were the Issei, the foreign-born Japanese-Americans, whose determination and great faith in themselves, whose self-discipline and ability, enabled them to turn California deserts into gardens to beautify and feed America. Many of them helped build the railroads that span our great Nation, and many of them went into business and became highly successful. But always, the Japanese Americans were among the most dignified and public spirited citizens in their community.

At the very outset, the Japanese immigrants should have been welcomed to our country in the same manner as the peoples of European nations; and yet they were not. Their contribution to the community was as great, if not greater. They were helpful, they were temperate, they were never troublemakers. They were the model citizens in every community. And yet their reward, much too frequently from their American neighbors, was discrimination and hostility. And, the greatest wrong of all to the foreign-born Japanese, was the fact they were barred from the most precious possession within the province of any nation to give—its citizenship. This was a direct outgrowth of the unfortunate Oriental exclusion laws, and the passage of those laws marked a black period for the Issei in America.

But with all their difficulties and their troubles, the Issei maintained their stoical faith in themselves, expecting that some day the great tradition of America, in providing equal justice to all Americans. And though they themselves were ineligibile for citizenship, they put their time and effort into the development of education of their children so that they would have the benefit and enjoy the right of American citizenship. They were loyal to their new country. When the attack on Pearl Harbor came immediately the people of Japanese ancestry became targets for suspicion throughout the United States and Hawaii without cause or provocation. Japanese who had been living in California for many years were uprooted, homes destroyed, and they themselves placed behind barbed wire detention fences without a hearing or trial.

Mr. Chairman, this should have been enough to kill the spirit of a less responsible group of people. But the reply from the Japanese parents was to sent their children out from behind the wire fences into the American Armed Forces to fight the Nazis and the armed forces of their ancient homeland. It should be of great honor to Japanese Americans that their sons became world famous as members of one of the greatest fighting units of all time, the 442d Regimental Combat Team.

The record deserves mention because it was so outstanding during World War II. There comes to mind the record of Sgt. Ben Kuroki, who flew 58 bombing missions over Europe and Japan and became a national hero. Two Japanese American units, the 442d Regimental Combat Team and the 100th Infantry Battalion, later merged with it, were among the most decorated in the history of the U.S. Army. Fighting in Italy and France, the 442d more than lived up to its regimental motto "Go for Broke," a Hawaiian idiom meaning "shoot the works." It won 10 unit and more than 5,000 individual awards. Six hundred fifty of its Purple Hearts had to be delivered to the next of kin. No man in the 442d ever deserted, a remarkable record. Americans of Japanese ancestry not only fought the enemy abroad but had to bear the brunt of prejudice at home.

Exhaustive investigations by the Army, Navy, and FBI showed that not one act of sabotage was committed in Hawaii, though citizens and residents of Japanese ethenic background comprised one-third of that territory's population, or sabotage by one of them anywhere.

Their citizenship could not have been more exemplary. I know that because following World War II, many came to Chicago rather than return to California. I came to know them in 1948, and I came to know them well because I ran for Congress for the first time that year. They asked only one pledge of me as candidate for that office, and that was that I would consider favorable legislation which would permit their parents to become citizens.

When I was elected to Congress, the first bill I filed was one which would grant the opportunity to become citizens to the Issei, the Japanese immigrants who could not become citizens under the then laws against orientals.

It took 4 years for the bill to be passed. In 1952, the Congress passed the bill setting aside Oriental exclusion laws and providing that no person should be deprived of the opportunity to become an American citizen because of race.

There were so many things that had to be compensated for, and special legislation provided for, because certain Americans happened to be Japanese Americans. War brides they married had to have special legislation. Claims were filed, but the claims allowed by the Congress were only a pittance of the actual losses that took place against those who had been placed in the camps.

I believe that this Nation has a deep moral and special obligation to recognize the need to make right, to the extent it can be righted, this historic injustice to a fine group of Americans. It is agreed that while money cannot compensate for this immense wrong, it can help do so, Mr. Chairman. The great lawyer, Clarence Darrow was asked by a client, whose cause he had successfully prosecuted in court, how she could ever possibly pay for what he had done for her. Darrow replied: "Madam, the Phoenicians evased such questions when they recognized monetary standards for compensation." An apology is appropriate in this bill. Equally appropriate is some monetary compensation for those wronged by this country by improper incarceration. The Congress must meet its responsibilities by recommending appropriate redress.

Mr. Chairman, I am appalled by the suggestion made by some Members of the House that one of the consequences of approval of this bill may be the rebirth of the discrimination against Japanese-Americans that gave rise to this wrong. To my mind that would be a reason for approving this bill, to show that this Congress be-

lieves, as I'm sure the American people do—that there is no place for such vicious thinking in our country, that threats or warnings, that such attitudes will rise again if we pass this act cannot be accepted or endorsed.

□ 1300

For the reasons I have stated, Mr. Chairman, I ask that the Lungren amendment be opposed and voted down.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. YATES. I yield to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. I thank the gentleman for yielding.

First of all, let me say I want to congratulate the gentleman for the work he did on removing the Oriental exclusion law. It is a little known piece of history that many of those Japanese nationals who were in the United States in California along the coast at the outbreak of World War II were assumed to be disloyal by other Americans because they had not become American citizens when it was not realized that they were incapable of becoming American citizens because we would not allow them. They could live here 60, 70 years, but if you happened to be born in Japan you could not become an American citizen.

Mr. YATES. And you could not own land in California.

Mr. LUNGREN. And you could not own land in California. And I think what the gentleman did in bringing that to the attention of the Congress and removing that blight on our legal history was extremely important.

I just want to congratulate him for what he did there.

Mr. YATES. I thank the gentleman for his comments.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, everybody agrees that the policy that we are talking about was wrong and unfair and I think everybody in this House agrees that there ought to be a formal apology and that is a part of this bill as well.

We have reviewed the history. One speaker, a proponent of the bill, said he felt badly because there was a Democrat President and a Democrat Congress and that maybe they were responsible in some way. I do not feel that at all, Mr. Chairman. It was a national policy, it was endorsed by most Americans, and for it, as the successors, we are all indicted.

On the other hand, if we could magically transport this Congress back to those days and under those circumstances my suspicion is that we would do about what that Congress did in those days, which was nothing. I do not think we are any wiser than the Congress that was seated at that time.

However, I think it is important to note that none of us here, at least as far as I know, participated in government at that time even though I suspect we all would have let it happen without objecting to it.

I think part of what the bill tries to do is to admit our guilt and to apologize for it. I think that is exactly what we should do today, but I am a little bit disappointed with what the committee is asking us to do.

What a contorted way the committee gives us to show how guilty we feel or how embarrassed we are. What a funny way they ask us to rub ashes on our heads. They are saying that with our current budget situation that our children and grandchildren must pay for mistakes that were made two or three generations before they were born by accepting the debt which the $1.2 billion is going to incur.

The committee is asking us to purge ourselves of somebody else's guilt with another generation's money. Just think of the enormity of that for a minute. It is not anything that we did but because we feel guilty, because we have these noble motivations to right some wrongs, we are going to give away money indiscriminately without respect to the degree of suffering, without respect to whether we take it from the poor and give it to the rich or whatever because we feel a little bit guilty. We are going to put the hair-shirt on somebody else and that somebody else is our children and our grandchildren. And remember, they did not make the decision and neither did we make the decisions.

This seems to me to be a perfectly typical congressional action: Whenever we feel badly we give away somebody else's money. Then suddenly we are made whole, we are purged and we all feel wonderful.

Well, I do not think our constituents feel wonderful about that. I do not think if you put this bill to referendum that you would get one objection to admitting guilt. I think you would get nearly 100 percent objection to giving away money indiscriminately, which the Government does not have, to people without respect to the degree of claim they have.

Many Members have said in no way can we compensate for what we did to these people. I believe that is true and I believe in no way should we try to compensate, should we try to pay blood money to cleanse this embarrassment or the guilt that we all feel.

I hate to be curmudgeonly on this subject, I always hate to argue against somebody else's bill. I find it is a role I am cast into frequently. I hate to put my judgment ahead of the people who have studied these things for a long time but for better or for worse that is my job and that is all of our jobs. I do not think I am going to feel one bit better after we have given away our grandchildren's money in this way than I do today. I am still going to feel that we made a mistake, I am still going to hope that we do not make that mistake again, but I am not going to feel fulfilled or purged or cleansed at all. It is $1.2 billion. We do not have that in our budget. That means that should we be lucky enough to get a Gramm-Rudman bill we will have to make up the $1.2 billion somewhere else. Maybe we will have to cut it from a grant to somebody who is poor so that we can pay this to a rich person. I believe this is an act of phonyness and I believe the amendment should be supported. The rest of the bill should be passed. If the amendment is not supported I cannot support the bill.

Mr. MATSUI. Mr. Chairman, I move to strike the requisite number of words.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from California.

Mr. FAZIO. Mr. Chairman, I rise in strong support of the bill and in opposition to the amendment.

Mr. Chairman, 45 years ago, we suspended our laws in a most unfortunate and blatant display of racism by incarcerating or relocating 120,000 Americans of Japanese ancestry. This action was carried out despite the lack of military justification and the fact that the Japanese within our borders were loyal and patriotic Americans. Quite simply, ethnic prejudice and wartime hysteria were responsible for this incredible tragedy.

We have a special pride in our country because it is composed of people of different backgrounds, ethnicities, and heritages. Our Constitution, which is celebrating its bicentennial today, is based on the premise that members of our society should be judged as individuals, not on the basis of race, ethnicity, or any other personal characteristic. Yet 45 years ago we imprisoned without justification, charge, indictment, or trial, Americans of Japanese ancestry precisely on this basis. Incredibly, we did not turn our racism against German-Americans or Italian-Americans and incarcerate them despite the fact that Japanese-Americans posed no greater threat than individuals of these heritages. Further, throughout World War II, those soldiers of Japanese ancestry who fought for the United States were among the most decorated and patriotic soldiers. Plain and simple it was wrong for us to intern any American citizen on the basis of ancestry.

Two distinguished Members of this body were among those personally affected by this tragedy. Congressman BOB MATSUI was an infant and Congressman NORM MINETA, a young child whose unfortunate fate of living in California, and being of Japanese an-

cestry resulted in their relocation. Had they lived anywhere besides the west coast they would have been spared since only those of Japanese ancestry living on the west coast were subject to this great injustice. And despite the pain that this tragic action personally causes them, it is very much the result of their tireless efforts that we are finally addressing this dark moment in our history.

I wholeheartedly support H.R. 442 for it recognizes that the internment of Japanese-Americans was a racist and wrongful act and offers compensation and an apology that was due some time ago. No sum of money can undo the pain and devastation of this action but we can repay our moral debt. Our sense of obligation leads us to publicly and formally apologize to those of Japanese ancestry who were relocated and interned during World War II. This legislation also serves to remind us of the moral and ethical consequences should we ever be tempted to abrogate the rights of such a group within our borders. Moreover, it sends a clear signal and reaffirms to present and future generations that we do place a high value on civil liberty. For these reasons and the need to finally redress the horrors of this unfortunate action, I strongly support the passage of H.R. 442 and urge the support of my colleagues.

Mr. MATSUI. I would like to first of all thank the leadership of both the majority and minority for holding this bill on the 17th of September.

I would also like to thank both the Republican-Democratic caucus members for being here on a day when this is the only issue before us.

I realize many Members would like to get back to their home districts cr their home States for celebrations in their various areas, and that to be here on this day is somewhat of an imposition on the membership.

I would also like to state that this is a very difficult issue for me to speak on today, mainly because it is, I guess, so personal and perhaps some of you may think that I may lack objectivity. That may very well be the case. But I will try to be objective.

I would like if I may for a moment, however, to indicate to all of you perhaps what it was like to be an American citizen in 1942 if you happened to be of Japanese ancestry.

My mother and father who were in their twenties were both born and raised in Sacramento, CA, so they were American citizens by birth. They were trying to start their careers. They had a child who was 6 months old. They had a home like any other American. They had a car. My father had a little produce business with his brother.

For some reason because of Pearl Harbor in 1942, their lives and their futures were shattered. They were given 72 hours notice that they had to leave their home, their neighborhood, abandon their business, and show up at the Memorial Auditorium which is in the heart of Sacramento and then be taken, like cattle, in trains to the Tule Lake Internment Camp.

My father was not able to talk about this subject for over 40 years and I was a 6-month-old child that they happened to have. So I really did not even understand what had happened until the 1980's. It was very interesting because when he finally was able to articulate he said, "You know what the problem is, why I can't discuss this issue, is because I was in one of those internment camps, a prisoner of war camp and if I talk about it the first thing I have to say is look, I wasn't guilty, I was loyal to my country, because the specter of disloyalty attaches to anybody who was in those camps."

And that stigma exists today on every one of those 60,000 Americans of Japanese ancestry who happened to have lived in one of those camps.

They were in that camp for 3½ years of their lives and, yes, they have gotten out and they have made great Americans of themselves and I think if my mother were alive today she would be very proud of what the U.S. Congress hopefully is about to do, because the decision we make today really is not a decision to give $20,000 to the 66,000 surviving Americans, the decision today is to uphold that beautiful, wonderful document, the Constitution of the United States.

You know, because this is the 200th celebration, we have been talking about those 55 individuals who put together that document, and I do not think there is any question that there was some Supreme Being that gave them the inspiration to put that document together. I will also say if you took that same document and put it in the Soviet Union there would be no way that the people of that country would understand what it truly means and the spirit behind it. It is only because of the American people that that document is a living document with meaning, not only 200 years ago, but for 200 years in the future as well. The real issue here today is an issue of fundamental principle. How could I as a 6-month-old child born in this country be declared by my own Government to be an enemy alien? How can my mother and father who were born in this country also be declared a potential enemy alien to their country? That is the underlying issue here. They did not go before a court of law, they did not know what charges were filed against them. They were just told, "You have 3 days to pack and be incarcerated." That is the fundamental issue here.

Now I would like to just, if I may, discuss some of the principles that were raised by the proponents of the Lungren amendment just for a moment.

The gentleman from Minnesota said, "Why should today's generation pay for the tragedies of the past generation?" I do not look upon America in terms of generations. We must look upon this country as a continuous flow and ebb. We are not talking about a generation in the 1940's and a generation today. We are talking about fundamental principles because the Constitution does not change from generation to generation. It is a living document that exists forever, for eternity. So it is not a question of generations. I know that some would say, "Well, we as Americans in time of war have responsibilities and everybody suffers in time of war." You know, that is true. RON PACKARD from California gave an eloquent presentation of the fact that his father had been incarcerated during World War II by the Japanese Government, a prisoner of war. Many families lost their husbands and their sons and many families were broken because of tragedies like divorce because of the separations. Everybody suffers during times of war so why should not the Japanese-Americans also share in that suffering? Let me say this: Every one of us, if war were declared today, would volunteer to fight on behalf of our country and our democracy; that is a fundamental principle.

The CHAIRMAN. The time of the gentleman from California [Mr. MATSUI] has expired.

(On request of Mr. YATES and by unanimous consent Mr. MATSUI was allowed to proceed for 3 additional minutes.)

Mr. MATSUI. That is a fundamental responsibility of a democracy, a fundamental responsibility of our Government that if our security is jeopardized we have a responsibility to defend it.

□ 1315

We have a responsibility to die for our country, but I tell you one thing, that in a democracy, this democracy with out Constitution, a citizen does not have a responsibility to do: every one of us does not have a responsibility to be incarcerated by our own Government without charges, without trial, merely because of our race. That is what our constitutional fathers meant 200 years ago when they wrote the Bill of Rights. That is not a responsibility and an inconvenience of a democracy.

I hope that each and every one of the Members will find it in their hearts to look at these issues not as an individual tragedy for 60,000 Americans of Japanese ancestry but look at it in terms of the real meaning of this country. We are celebrating 200 years

of a great democracy, and I think we can today uphold and renew that democracy with a vote in favor of this bill and a vote against the pending amendment.

Mr. MINETA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I say to my colleagues that I would like to first express my deep appreciation of thanks to the leadership on both sides of the aisle for the opportunity to have this bill brought up on the 17th of September, 1987.

Congressman JIM WRIGHT, the Speaker of the House of Representatives, has been involved in this issue right from the beginning. He was the original author of the bill that created the Presidential Commission on Wartime Relocation and Internment of Civilians. That Commission was appointed in 1981, and it worked on this for 18 months in order to complete its report. Then Congressman JIM WRIGHT went ahead and produced the work product, the legislative recommendations of that Commission, and he has been a strong supporter of this effort ever since. In the 100th Congress, with Congressman JIM WRIGHT becoming the Speaker of the House and unable to sponsor legislation, our majority leader, the gentleman from Washington, Mr. TOM FOLEY, has been the author of it, and we have had good, strong bipartisan leadership on behalf of this bill all the way through.

But to me this is a very, very emotional day, in sharp contrast to May 29, 1942, when, as a 10½-year-old boy wearing a Cub Scout uniform, I was herded onto a train under armed guard in San Jose, CA, to leave for Santa Anita, a race track in southern California. And here, on the 17th of September, 1987, we are celebrating the 200th anniversary of the signing of that great document, the constitution of our great land. It is only in this kind of a country, where a 10½-year-old can go from being in a Cub Scout uniform to an armed-guard-guarded train to being a Member of the House of Representatives of the greatest country in the world.

Mr. Chairman, I rise now to urge my colleagues' opposition to the amendment offered by our fine friend, the gentleman from California [Mr. LUNGREN]. Today we can truly celebrate the bicentennial of our great Constitution by passing this legislation without any weakening amendments. H.R. 442, including compensation, will reaffirm and strengthen this very, very vital document that we are celebrating today.

H.R. 442 may not deal with events either as distant or as proud as those in Philadelphia 200 years ago, but the bill does address events just as central and just as fundamental to our rights and to our laws.

The gentleman's amendment would eliminate a key provision of this bill, the payment of monetary compensation to the present-day survivors of a shameful episode in our Nation's long and proud history. Beginning in 1942, the Federal Government ordered and sent 120,000 Americans of Japanese ancestry to isolated camps scattered throughout the Western United States, and those who were interned and evacuated had but days, sometimes only hours, to dispose of their property and set their affairs in order, and then, carrying only what their arms could hold, these Americans were summarily shipped off to parts unknown for up to 3 years.

Because the Government of the United States was responsible for the violation of the rights of 120,000 lives, that Government, our Government, has a legal and moral responsibility to compensate the internees for the abrogation of their civil and human rights.

Now, some are saying that these payments are inappropriate, that liberty is priceless and we cannot put a price on freedom. That is an easy statement to make when you have your freedom, but it is absurd to argue that because constitutional rights are priceless, they really have no value at all. Would you sell your civil and constitutional rights for $20,000? Of course not. But when those rights are ripped away without due process, are you entitled to compensation? Absolutely.

I served on our House Budget Committee for 6 years. I was a member of the conference committee which wrote Gramm-Rudman-Hollings, so I understand and appreciate our budget constraints. But we all know that the funds authorized by H.R. 442 will be appropriated over several years and are but a tiny fraction of our trillion-dollar Federal budget. But the most important considerations in our actions today must be merit and justice, and this authorization is not only just but long, long overdue. If we reject this amendment, history will show that on this bicentennial day, the House of Representatives could not rest until it had redressed the wrong of 1942.

The CHAIRMAN. The time of the gentleman from California [Mr. MINETA] has expired.

(By unanimous consent, Mr. MINETA was allowed to proceed for 3 additional minutes.)

Mr. MINETA. Mr. Chairman, those wrongs will not be righted, those injured will not have been redressed until we have acted to prove, not only in word but in word and in deed, that the evacuation and the internment were tragic mistakes that our Government will never repeat. By keeping compensation in H.R. 442, the House will tell the world that this body is genuine in its commitment to the Constitution and we will be putting our money where our mouth is.

One night in early 1942, when we did not know what events were to come, my father called our family together. I had one sister in San Francisco, but the rest of us, the four of us, were still in San Jose. He said he did not know what the war would bring to my mother and to him since they were resident aliens, my dad having come in 1902 and my mother in 1912, but with the Oriental exclusion law of 1924 they were not able to become citizens because they were prohibited by that racial exclusion law from becoming U.S. citizens. However, he was confident that his beloved country would guarantee and protect the rights of his children, American citizens all. But his confidence, as it turned out, was misplaced.

I was born in this country, as were most of those who were interned, yet at that time even citizenship was not enough if your parents or grandparents had come from Japan. So on May 29, 1942, my father loaded his family upon that train under armed guard which was taking us from our home in San Jose to an unknown distant barracks. He was later to write to friends in San Jose, and he wrote in that letter about his experience and his feelings as our train pulled out of the station. I quote from the letter:

> I looked at Santa Clara's streets from the train over the subway. I thought this might be the last look at my loved home city. My heart almost broke, and suddenly hot tears just came pouring out, and the whole family cried out, could not stop, until we were out of our loved county.

We lost our homes, we lost our businesses, we lost our farms, but worst of all, we lost our most basic human rights. Our own Government had branded us with the unwarranted stigma of disloyalty which clings to us still to this day.

So the burden has fallen upon us to right the wrongs of 45 years ago. Great nations demonstrate their greatness by admitting and redressing the wrongs that they commit, and it has been left to this Congress to act accordingly.

Injustice does not dim with time. We cannot wait it out. We cannot ignore it, and we cannot shrug our shoulders at our past. If we do not refute the shame of the indictment here and now, the specter of this tragedy will resurface just as surely as I am standing here before you, and the injustice will recur.

This bill is certainly about the specific injury suffered by a small group of Americans, but the bill's impact reaches much deeper into the very soul of our democracy. Those of us who support this bill want not just to close the books on the sad events of

1942; we want to make sure that such blatant constitutional violations never occur again.

□ 1330

I must confess that this is a moment of great emotion for me. Today we will resolve, if we can finally lift the unjust burden of shame which 120,000 Americans have carried for 45 painful years.

It is a day that I will remember for the rest of my life. I hope the Members will help me, too, to remember it as a day when justice was achieved, and so with all my heart, I urge the Members to oppose this amendment and to support H.R. 442, the Civil Liberties Act of 1987, and in so doing, to reaffirm our Constitution on this very historic day.

Mr. Chairman, I urge my colleagues to vote for H.R. 442.

Mr. SHUMWAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the two gentlemen from California have both spoken very eloquently about not just this bill, but about their own experiences; and I am sure we have all been touched by their remarks.

Indeed it seems to me that all of the speakers that have spoken in favor of this bill, and against the pending Lungren amendment, have made excellent arguments for an apology being made to those who were aggrieved in World War II.

If that were the only issue before us, it would pass unanimously, and we would all agree and not have this debate. That is not the only issue.

We are talking about money. Mr. Chairman, I cannot yet see a case having been made for the payment of money damages. Why is it we cannot say that we are sorry without paying money with it?

We might call it a seal, or we might call it special treatment; but I just do not know of any precedent for compensation of money in cases like this.

Certainly we have the Civil Rights Act, and it provides remedies for those whose civil rights have been violated, and those remedies include damages. There is no question about that.

We all support that, but those remedies are invoked after the presentation of evidence, after a burden of proof has been sustained, none of which is applying in this abbreviated procedure.

It is ironic that many of my Japanese-American friends have told me that they do not want the money. They are not interested in the $20,000, and I simply ask then, if that is the case, why are we voting money.

Why can we not simply say, we are sorry, and leave it with that matter; and finally, Mr. Chairman, I do not think there is any Member of this body that should realistically believe that the payment of $1¼ billion is going to be any kind of deterrent to the Federal Government.

It is not going to teach us a lesson, particularly a Government like ours that spends $3 billion a day in routine fashion without hardly the blink of an eye.

We need to have something of a more lasting and significant nature. If we want to look for a deterrent, it is not in this bill.

Mr. LUNGREN. Mr. Chairman, will the gentleman yield?

Mr. SHUMWAY. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Chairman, I thank the gentleman for yielding.

As the author of this amendment, I respect the judgment and the sentiment of the two gentlemen from California.

When I took upon the responsibility to represent this House in the Commission investigating it, I did so because of my belief that we had to make it very clear that there should be no shadow of question hanging over the heads of Japanese-Americans, or Japanese nationals who were the subject of this executive order in the 1940's.

I have a disagreement with the gentleman from California as to whether money is necessary to make that genuine, but I do not want anybody to believe that I reject the notion that we ought to apologize, or that I reject the notion that we ought to erase that stigma, if it does exist.

It is extremely important for us as a Congress to do so. At the same time, I would hope we do not believe now the genuineness, as suggested by some, can only be measured in dollars.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment and in support of the bill as it was reported.

Mr. Chairman, I would like to take this time to commend my colleagues for their untiring pursuit of justice for the Japanese-American civilians who were evacuated, relocated or interned during World War II. I appreciate this opportunity to speak on behalf of this bill and urge my colleagues to support passage of H.R. 442 without the inclusion of limiting amendments.

1987—the year that marks the celebration of the Bicentennial of the Constitution of the United States—is a fitting year to redress the terrible wrongs committed against some 120,000 Americans of Japanese descent; Americans whose homes and businesses were lost, whose families were uprooted for up to 3½ years, whose ancestry was the excuse for the betrayal of the principles upon which our Constitution was founded.

H.R. 442 would implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians that was created by Congress to investigate the circumstances surrounding President Franklin Roosevelt's Executive Order 9066 of February 2, 1942. This legislation authorizes a $1.25 billion trust fund in order to give $20,000 to each of the internment survivors. The compensation we offer here today cannot adequately redress the grave injustice done to both citizens and permanent resident aliens of Japanese ancestry. It can communicate, however, the sincerity of our offer to make amends to the victims of this violation of personal liberty.

Through orderly policy, H.R. 442 will avoid court ordered reparations which surely would be awarded if cases or class action suits were carried to fruition. United States law should seek to avoid such confrontation and the negativism that it would spawn. The resources in this measure will provide as timely a compensation as is possible today to those Japanese-Americans that suffered through these experiences without the burden inherent in the judicial process.

Mr. Chairman, I support the establishment of the trust fund and the creation of a civil liberties public education fund. In order to continue teaching the importance of the lessons learned from this tragedy of injustice, we as Americans must make an effort to make the relevant facts readily accessible. Sponsoring research and public education programs is necessary for the reflection that will help us and our children to understand the circumstances and causes surrounding the internment of Japanese-American civilians, and to ensure that a similar incident will not happen in the future.

Mr. Chairman, I rise in support of this bill, and again urge my colleagues to support H.R. 442 in its entirety.

Mr. WRIGHT. Mr. Chairman, anything I or any other Member might say at this point could be quite anticlimactic.

I simply want to suggest that I can think of no finer way to celebrate the 200th anniversary of the Constitution of the United States than to rectify a wrong.

I can think of no better statement of the bona fides of our intention than to admit that we were grievously wrong, to make atonement, and thus to reaffirm our commitment that the Constitution of the United States applies equally to all American citizens.

Forty-five years ago some 120,000 people were uprooted from their homes, taken from their businesses and from their farms, and imprisoned on no other ground or cause than their racial ancestry.

Clearly, that was a violation of the Constitution. There can be no question. Without due process, without any allegation of any individual wrongdoing, they were incarcerated.

It was one of those grotesque political aberrations in America's political life that have occurred occasionally in moments of extreme national stress, which we later deeply regret, and for which we seek to make amends.

It is quite true that no amount of money can adequately repay for the loss of dignity, loss of face, the insult, the hurt, the denial that was visited upon these American citizens; but we owe it to ourselves to make atonement.

Conrad Adenauer, when head of the Federal German Republic in the 1950's, proposed that Germany should pay substantial economic aid to Israel, then an infant republic attempting to establish itself in the Middle East.

There were those who asked Conrad Adenauer why money was owed, or why money would be any measure of the sorrow and shame that was felt by the German people. Some said this cannot repay those who were so grievously wronged; this cannot restore life or liberty to those lives and liberties were taken by other Germans. And Conrad Adenauer replied, No, perhaps not, but the atonement we owe not to others, but to ourselves. It was in the nature of a penance to cleanse and restore the German soul.

Now on this 200th anniversary of our Constitution, I think all of us know that wrongs were committed, and any of us who have a doubt might try to imagine how he and his family might have felt if—for no other reason than the land from which their ancestors came—they had been seized, taken from their homes, denied their liberties, and incarcerated in prison for the better part of 4 years with the implication that they were disloyal Americans.

I think I know how I would have felt, though nobody can really know who has not been in that position. So I ask the Members to vote down the amendment, though I know the gentleman from California, the author, means well and does not condone what was done.

I ask the Members to vote for the bill. I think it will send a message down the corridors of the future that America is big enough to admit a mistake and honest enough within itself to try to make atonement for the error.

Some still live who were mistreated in this fashion. To them this will say we are sorry. We open our arms to you. We make redress for the wrong that we committed against you, and we offer this as an atonement; and we commit ourselves unequivocally by this act to the official proposition that all Americans, of whatever ancestry or origin or condition, are entitled to the protection of law.

□ 1340

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. LUNGREN].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LUNGREN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 237, answered "present" 1, not voting 34, as follows:

[Roll No. 320]

AYES—162

Applegate	Green	Parris
Archer	Gregg	Pease
Armey	Guarini	Penny
Baker	Hall (TX)	Petri
Ballenger	Hansen	Pickett
Barnard	Harris	Price (NC)
Bartlett	Hastert	Pursell
Barton	Hatcher	Ray
Bateman	Hayes (LA)	Regula
Bentley	Hefley	Rhodes
Bereuter	Hefner	Ridge
Bevill	Henry	Ritter
Bilirakis	Hiler	Roberts
Bliley	Holloway	Robinson
Boucher	Hopkins	Rogers
Boulter	Houghton	Rose
Brooks	Hubbard	Roth
Broomfield	Huckaby	Rowland (GA)
Buechner	Hunter	Schaefer
Bunning	Hutto	Sensenbrenner
Burton	Inhofe	Shaw
Byron	Ireland	Shumway
Callahan	Jenkins	Shuster
Carper	Kanjorski	Sisisky
Chapman	Kasich	Slaughter (VA)
Clarke	Kolbe	Smith (NE)
Coats	Kyl	Smith (TX)
Coble	Lagomarsino	Smith, Denny (OR)
Coleman (MO)	Leath (TX)	
Combest	Lent	Smith, Robert (NH)
Cooper	Lewis (FL)	
Daniel	Lightfoot	Smith, Robert (OR)
Darden	Livingston	
Daub	Lott	Solomon
DeLay	Lowery (CA)	Stangeland
Dickinson	Lujan	Stenholm
DioGuardi	Lukens, Donald	Stratton
Dorgan (ND)	Lungren	Stump
Dowdy	Mack	Sundquist
Dreier	Marlenee	Sweeney
Dyson	Martin (IL)	Tallon
Emerson	Martin (NY)	Tauke
Erdreich	McCandless	Taylor
Fawell	McCollum	Thomas (CA)
Fields	McEwen	Thomas (GA)
Flippo	McMillan (NC)	Traxler
Ford (MI)	Meyers	Upton
Frenzel	Michel	Vander Jagt
Gallegly	Miller (OH)	Walker
Gaydos	Montgomery	Watkins
Gekas	Moorhead	Whittaker
Goodling	Myers	Wolf
Gradison	Nichols	Wylie
Grandy	Olin	Yatron
Grant	Packard	Young (FL)

NOES—237

Ackerman	Bilbray	Chandler
Akaka	Boehlert	Cheney
Alexander	Boland	Clay
Anderson	Bonior (MI)	Clinger
Andrews	Bosco	Coelho
Annunzio	Boxer	Coleman (TX)
Anthony	Brennan	Conte
Aspin	Brown (CA)	Conyers
Atkins	Brown (CO)	Courter
AuCoin	Bruce	Coyne
Badham	Bryant	Craig
Bates	Bustamante	Crockett
Bellenson	Campbell	Dannemeyer
Bennett	Cardin	Davis (IL)
Berman	Carr	Davis (MI)
de la Garza	Kastenmeier	Rangel
DeFazio	Kennedy	Ravenel
Dellums	Kennelly	Richardson
Derrick	Kildee	Rinaldo
DeWine	Kleczka	Rodino
Dicks	Kostmayer	Roe
Dingell	LaFalce	Rostenkowski
Dixon	Lancaster	Roukema
Donnelly	Leach (IA)	Rowland (CT)
Downey	Lehman (CA)	Roybal
Duncan	Lehman (FL)	Russo
Durbin	Leland	Sabo
Dwyer	Levin (MI)	Saiki
Dymally	Levine (CA)	Sawyer
Early	Lewis (CA)	Saxton
Eckart	Lewis (GA)	Scheuer
Edwards (CA)	Lipinski	Schneider
Edwards (OK)	Lowry (WA)	Schuette
English	Luken, Thomas	Schulze
Espy	MacKay	Schumer
Evans	Madigan	Sharp
Fascell	Manton	Shays
Fazio	Markey	Sikorski
Feighan	Martinez	Skaggs
Fish	Matsui	Skeen
Flake	Mazzoli	Slattery
Florio	McCloskey	Slaughter (NY)
Foglietta	McDade	Smith (FL)
Foley	McGrath	Smith (IA)
Ford (TN)	McHugh	Smith (NJ)
Frank	McMillen (MD)	Snowe
Frost	Mfume	Solarz
Gallo	Mica	Spratt
Garcia	Miller (CA)	St Germain
Gejdenson	Miller (WA)	Staggers
Gibbons	Moakley	Stallings
Gilman	Molinari	Stark
Gingrich	Mollohan	Stokes
Glickman	Moody	Studds
Gonzalez	Morella	Swift
Gray (IL)	Morrison (CT)	Swindall
Gray (PA)	Morrison (WA)	Synar
Gunderson	Mrazek	Torres
Hall (OH)	Murphy	Torricelli
Hamilton	Murtha	Traficant
Hammerschmidt	Nagle	Udall
Hawkins	Natcher	Valentine
Hayes (IL)	Nelson	Vento
Herger	Nielson	Visclosky
Hertel	Nowak	Volkmer
Hochbrueckner	Oakar	Vucanovich
Horton	Oberstar	Walgren
Howard	Obey	Waxman
Hoyer	Ortiz	Weber
Hughes	Owens (NY)	Weldon
Hyde	Owens (UT)	Wheat
Jacobs	Pashayan	Whitten
Jeffords	Patterson	Williams
Johnson (CT)	Pepper	Wilson
Johnson (SD)	Perkins	Wolpe
Jones (NC)	Pickle	Wortley
Jones (TN)	Porter	Wyden
Jontz	Price (IL)	Yates
Kaptur	Rahall	Young (AK)

ANSWERED "PRESENT"—1

Mineta

NOT VOTING—34

Biaggi	Kemp	Quillen
Boggs	Kolter	Roemer
Boner (TN)	Konnyu	Savage
Bonker	Lantos	Schroeder
Borski	Latta	Skelton
Chappell	Lloyd	Spence
Collins	Mavroules	Tauzin
Coughlin	McCurdy	Towns
Crane	Neal	Weiss
Dornan (CA)	Oxley	Wise
Gephardt	Panetta	
Gordon	Pelosi	

□ 1355

The Clerk announced the following pairs:

On this vote:

Mr. Quillen for, with Ms. Pelosi against.

Mr. Coughlin for, with Mr. Lantos against.

Mr. Crane for, with Mr. Panetta against.

Mr. Oxley for, with Mr. Mavroules against.

Messrs. BATES, BONIOR of Michigan, and GARCIA changed their votes from "aye" to "no."

Messrs. LENT, SHUSTER, and ROSE changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BONKER. Mr. Chairman, on the rollcall vote No. 320 I was unavoidably detained and had I been present I would have voted "no" on the Lungren amendment.

(By unanimous consent, Mr. MICHEL was allowed to speak out of order.)

LEGISLATIVE PROGRAM

Mr. MICHEL. Mr. Chairman, I have asked for this time for the purpose of inquiring of the distinguished majority leader the legislative program.

Mr. FOLEY. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. Mr. Chairman, I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Chairman, I thank the distinguished Republican leader for yielding.

We, of course, expect to complete the present legislation within the next hour, I would assume, and there is no further business scheduled for today. The House will not be in session tomorrow.

Mr. Chairman, the House will be in session on Monday to consider H.R. 3030, the Agricultural Credit Act of 1987.

The House will convene at noon and it is expected there will be many recorded votes. Members should not expect an early adjournment on Monday.

We will move to complete the bill which probably will require a fairly late session Monday night and again voting will begin with consideration of the rule early on Monday after the House convenes at noon. Members should expect to be in the House at noon when the House convenes, and to stay late.

On Tuesday, because of the late session on Monday, we have postponed previously scheduled suspensions on Monday until Tuesday.

We will first consider on Tuesday H.R. 2783, the HUD appropriations, fiscal 1988, subject to a rule. The House on Tuesday of course is meeting at noon.

Then there are nine votes scheduled under suspensions:

H.R. 25, Whistle Blower Protection Act of 1987;

H.R. 390, to authorize a gold medal to Mary Lasker;

H.R. 3251, to authorize the minting of coins in commemoration of the bicentennial of the U.S. Congress;

H.R. 2035, to increase the authorization for Lowell National Historical Park;

H.R. 2566, Jean Lafitte National Historical Park and Preserve Amendments;

H.R. 2893, Fishermen's Protective Act reauthorization;

H.R. 1171, to establish a National Ocean Policy Commission;

H.R. 3017, National Sea Grant College Program Act; and

H.R. 3051, Airline Passenger Protection Act of 1987.

On Wednesday, September 23, the House will meet at 10 a.m. to consider an unnumbered House joint resolution for the continuing appropriations for fiscal year 1988, subject to a rule.

Members should be prepared on either Tuesday or Wednesday for the possibility of a debt ceiling conference report, although the conference has not concluded and I cannot predict this, the conference is making good headway and it may be that we will have a conference report ready for Tuesday or Wednesday.

When the House adjourns on Wednesday, the 23d of September, it will adjourn in respect of the Jewish high holidays and we hope to have an early adjournment Wednesday. We will attempt to forgo such things as 1-minute speeches and would hope to have an early disposition of our business for the benefit of the Members who must depart early.

The House though will not be in session accordingly on Thursday, September 24, and on Friday, September 25, we will have a pro forma session, but there will be no votes. The House will not meet on Thursday. We will have a pro forma session on Friday.

We will not have votes on Monday, September 28, Monday week, as the British would say.

Mr. MICHEL. Mr. Chairman, is it expected that that would be a suspension day with rollcalls rolled over, or is that pro forma?

Mr. FOLEY. Mr. Chairman, we assume there may be a suspension day with rollcalls rolled until Tuesday, September 29.

Mr. MICHEL. A week from Monday there will be no rollcalls, but there will be something Monday all day long?

Mr. FOLEY. Yes, but this coming Monday again there will be many rollcalls. The House will meet at noon. The Members should not attempt to arrive late because there will be votes early in the day. We will stay until completion of the bill. It may be rather late on Monday night in order to complete the legislation.

On Tuesday the House will meet at noon and we will consider the HUD appropriations bill and the nine suspensions, and Members are again reminded that Tuesday at 10 a.m., the House will meet informally with Senate guests and the President of Costa Rica, His Excellency, the President of Costa Rica, President Arias.

Mr. MARTIN of New York. Mr Chairman, will the gentleman yield?

Mr. MICHEL. Mr. Chairman, I yield to the gentleman from New York.

Mr. MARTIN of New York. Mr Chairman, with respect to Monday next, I would ask the distinguished majority leader, there had been a hearing that has been scheduled and has had to be changed on a number of occasions relative to the Armed Services Committee. We would like to have an idea as to when that first vote would occur on Monday as best the gentleman can divine. I appreciate that the gentleman cannot give us the exact time.

Mr. FOLEY. Mr. Chairman, I would say there is a possibility of a vote about 1 minute after noon on the Journal, and then I would think a vote on the rule will occur probably between 1 and 1:30, but it could occur without debate on the rule as early as 5 minutes after 12. That is not likely, but there was an hour debate on the rule and any time between an hour and a few minutes there will be a vote.

I would tell the gentleman that, if a Member does not appear at noon, he is probably going to miss a rollcall vote on the Journal; if Members are not here by 12:30, they risk missing a vote on the rule.

Mr. MARTIN of New York. Mr. Chairman, I can understand that, and I do not expect the majority leader or anybody else to be able to say whether or not it is going to be at 10 after 1 or whatever. I do want to point out, and this is not my district or for myself, but something very important for our committee, and it has frustrated one of the Members frankly on your side of the aisle.

Mr. FOLEY. Mr. Chairman, I would give this advice, since we have announced that on September 28 there will be no votes on the House floor except procedural votes, I would suggest the distinguished committee reschedule its hearing for a date on which it is announced there will be no votes, and that is Monday, September 28.

Mr. MARTIN of New York. Mr. Chairman, I thank the majority leader for his guidance.

AMENDMENT OFFERED BY MR. SHUMWAY

Mr. SHUMWAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SHUMWAY: Page 8, lines 8 and 9, strike out "sum of $20,000" and insert in lieu thereof "amount provided in paragraph (2)".

Page 8, add the following after line 24 and redesignate the succeeding paragraphs accordingly:

(2) AMOUNTS OF PAYMENTS.—The amount of the payments to eligible individuals under paragraph (1) are as follows:

(A) Except as provided in subparagraph (B)—

(i) an eligible individual who was confined or held in custody (as described in section 10(2)(B)) for a period of 3 years or more shall be paid $20,000; and

(ii) an eligible individual who was confined or held in custody (as described in section 10(2)(B)) for a period of less than 3 years shall be paid $18 for each day of such confinement or custody.

(B) With respect to any period in which an eligible individual, while confined or held in custody (as described in section 10(2)(B)), was less than 18 years of age, that individual shall be paid for each day of such confinement or custody during that period the number of dollars equal to the age (in whole years) of that eligible individual.

Page 16, lines 1 and 2, strike out "confined, held in custody, relocated, or otherwise deprived of liberty or property" and insert in lieu thereof "confined or held in custody".

Page 5, strike out line 19 and all that follows through page 6, line 4 and insert in lieu thereof the following:

(a) REVIEW OF APPLICATIONS BY CERTAIN INDIVIDUALS.—

(1) IN GENERAL.—Each department and agency of the United States Government shall review with liberality, giving full consideration to the historical findings of the Commission and the findings contained in this Act, any application by an individual described in paragraph (2) for the restitution of any position, status, or entitlement lost in whole or in part because of any discriminatory act of the United States Government against such individual which was based upon the individual's Japanese ancestry and which occurred during the evacuation, relocation, and internment period.

(2) INDIVIDUALS TO WHOM PARAGRAPH (1) APPLIES.—The individuals to whom paragraph (1) applies are—

(A) any eligible individual, and

(B) any individual who would be an eligible individual, except that such individual was relocated or otherwise deprived of liberty or property (but was not confined or held in custody) as a result of any of the laws, orders, directives, or other actions described in section 10(2)(B).

Mr. SHUMWAY [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1410

Mr. SHUMWAY. I thank the Chairman.

Mr. Chairman, I realize the hour is late and many Members have obligations to travel very shortly. I would like to speak just briefly about my amendment because I do think it has merit and it is worthy of being considered by the House in earnest.

I recognize also that it has been the position of the proponents of this legislation that they resist all amendments. I recognize the reasons for that position.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. SHUMWAY. I would be happy to yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I thank the gentleman for yielding.

I would simply like to say to the gentleman I appreciate his spirit, but, Mr. Chairman, the gentleman is incorrect when he says we are resisting all amendments. We began today with an amendment to the language, a very important amendment offered by the gentleman from California to which the majority willingly acquiesced. So we have not resisted all amendments. We in fact have acquiesced to one.

Mr. SHUMWAY. The gentleman is correct and I appreciate him correcting the record in that regard. But I think otherwise our colleagues have indicated that the proponents of the bill do resist any other amendments.

I simply offer this one, Mr. Chairman, because I sincerely believe it improves this bill. It does not cut the bill, but I think it makes it much more palatable to many Members of this body.

Let me point out in the very beginning that the purpose of this amendment is not to cut costs. It does result in a smaller amount of outlays from the Federal Government, but it is not a cost-cutting effort for which I offer this amendment. Rather, the purpose of this amendment is to achieve some measure of fairness in the bill and indeed I think that goal would appeal to all Members of this body.

Again, let me just reiterate that my purpose in offering this amendment is not to cut costs but to build into the bill a measure of fairness that I think is not there at the present time.

The bill defines persons eligible for the $20,000 payment as being any person that spent any length of time at all in one of the camps that we have talked about. It seems to me, Mr. Chairman, implicit in that definition is an injustice that needs to be rectified. It is not difficult for us to imagine on the one hand an infant who may have been born in camp perhaps toward the end of World War II, maybe spent a week or just a few days in camp and then because his parents were released, exited from the camp with his family, spending only a matter of a few days there. On the other hand, contrasted with that internee is the head of a family who may have been committed to supporting his children with a store or a farm, who had income that he used to provide for his family, that person having to pull up roots, lose his home, lose his possessions, move his family out of the home, obviously posed to him a great deal of hardship especially if he spent as long as 3 years in the camp, as many did.

It seems to me we make a mistake by putting both types of victims in the same category, paying them both $20,000. Obviously, the degree of civil rights deprivation is much greater in the one case than it is in the other case. One of the objections I have had to this bill is the arbitrary nature of that formula. So my amendment suggests, Mr. Chairman, that we build in two factors to the formula which I think will ease away the arbitrariness from it.

Under my amendment we would pay $20,000 to the person who was an adult who spent the 3 years in camp. But for other adults who spent a shorter period of time in camp, the rate of pay would be $18 per day which essentially works out to the $20,000 over the 3 years. For those who were minors or infants under the age of 18, my amendment would pay them at the rate of $1 per day times the age that they were when they were in camp. It seems to me, Mr. Chairman, that this kind of formula is much better geared and tailored to meet the civil rights laws that we've heard described so well here during the debate today.

It is fair, it is one that will not require an overwhelming burden of proof on the part of the Japanese-Americans who were victimized. There are tables, there are lists, there is information available in the archives of the Library of Congress.

The formula I have devised is quite simple. It may not be perfect but I do think it is fair and I urge it upon the Members for that reason.

Mr. DYMALLY. Mr. Chairman, I move to strike the last word and rise in opposition to the amendment.

Mr. Chairman, much has been said about the injustice of the experience of the Japanese-Americans across the United States during World War II. I do not think there is any need to delve any further. However, I do want to respond to two or three points raised by my neighbor, Mr. LUNGREN, and my friend, Mr. PACKARD, dealing with the question of compensation which they seem to think is either immoral or illegal.

Mr. LUNGREN, for whom I have great respect and who moved me when he gave his stirring remarks here about Martin Luther King's birthday holiday bill is someone for whom I have a great deal of respect and I want to respond to his legal premise upon which he opposed the compensation.

He cited the fact that the Supreme Court had made a decision on this issue and therefore it seems somewhat redundant, it seems unnecessary that we should relive that part of history. I want to cite to him here—and I am not a lawyer—the case of Plessy versus Furgeson where the Supreme Court of this land upheld the whole question of separate but equal accommodation.

Subsequently, this Congress corrected that with the Civil Rights Act and therefore it seems to me very appro-

priate today for this Congress to correct an error on the part of the Supreme Court. The Supreme Court is the highest court in the land but they are not endowed with perfection. From time to time they make very grave and historic mistakes and that is what we are trying to do here, to correct that.

Mr. PACKARD, my friend from California, also made a very moving statement about the loss of his father and the disorganization of his family. But his father was not discriminated against because he was a white male. He was discriminated against because he was part of the adversary group, he was viewed as part of the enemy. He was captured by the enemy. He was not singled out because he was white and male.

In this case the Japanese-Americans were singled out because they were a Japanese ancestry. So it does not seem to me that the case of Mr. PACKARD applies here. It is totally in keeping with the nature of war.

This is a case where the United States did not give protection to its own citizens. On the other hand and without attempting to be personal or offend anyone because I strongly opposed the internment, there were several thousand Germans in the Midwest and there were Nazi spies within the United States and the U.S. Government was aware that the Nazis had penetrated the United States. They arrested some of them. They did not put the Germans living in the Midwest in concentration camps.

While the United States was at war with Germany and Italy also, there were no American-German or American-Italian internment camps, yet as I have stated earlier, 120,000 Americans of Japanese ancestry were interned, simply because they were a racially identifiable nationality. The security justification does not stand since there is not one documented case of espionage by a Japanese-American. So here was a case of blatant discrimination. But the point that the opposition to this bill is making is that the monetary compensation is either illegal, immoral, or unnecessary. It seems to me perfectly proper, very appropriate that we should compensate these people who lost their property. As a newcomer to Los Angeles, I ended up in an area which I think most of you know, around the coliseum, University of Southern California.

I have lived in that area and I was haunted very often by the notion that I was living in a house which was taken away by the Government from a Japanese-American and which was sold by real estate developers for very little money. And that notion always haunted me. As a legislator in California I looked to see how I could make a contribution to rectify this wrong, one of which was: Many Californians of Japanese ancestry had become victims of the bombing in Hiroshima and Nagasaki and had developed a peculiar ailment but they were ineligible for Medicare because they were wage earners. I introduced legislation to see if we could open up a research institute at UCLA to look at this peculiar ailment. So we have an opportunity today, Mr. Chairman, to rectify a wrong and to pay compensation in a small amount, not to compensate for an injustice but as a symbolic gesture on the part of the United States.

Mr. ARMEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I am reluctant to rise in this debate for many reasons, first because I myself have such strong feelings; second, because so many strong feelings are expressed by others. But probably more than any other reason, because of the eloquence of the debate has been moving for so many of us and I hesitate to add my clack to that eloquence.

I rise because I feel compelled to rise, Mr. Chairman.

We are here as Representatives of our constituents and as Representatives today we are attempting to do two things. The first is a good thing and a necessary thing, to make a public confession that our Government was wrong and to ask forgiveness for that wrong on behalf of ourselves as Representatives and on behalf of the people that we represent.

I believe that is sincere by all parties. What I worry about is the extent to which we can really do that for our constituents. Can we make our constituents understand what we feel today? And will they feel that?

So I am not sure, Mr. Chairman, whether we can do that or not, but I feel honored that we have been willing to try and make the effort for all American people to make this statement.

The second thing which I do not believe is a good or a necessary thing to do is, strangely enough, what we most certainly can do which is spend the American citizens' money to make restitution. And if we spend that money and we do not have a sincere universal reconciliation of our feelings and our attitudes in the process, it will be a blatant hypocrisy. In that regard, Mr. Chairman, I want to speak about a single word, a word that I find offensive, a word that is a dirty word, a word that is a mean word and a word that is a harsh word, that I once again hear in this town, I am sorry to say, I have heard on this floor and I hear in this country that I thought I would not hear anymore.

□ 1425

I was around in 1942, 1943, 1944, 1945, 1946, and 1947, and I heard that word. I did not like it then, and I do not like it now. The word I am talking about is the word, "Jap." I hear it in this country too much, and I hear it in conjunction with the trade bill. I want the body to know that I do not take such a word to the well lightly.

But if we use that word, after we have this vote—and we most certainly will, I understand, vote the apology and the money, and we are doing that as Representatives of the people and as leaders of the people—if we do that and if we then, pursuant to this action today, whether it be with regard to trade or any other subject, either use or accept the use of that word or any such word that is an epithet against a race of people, or the spirit within which such language is used, then what we will have done today will have been a terrible hypocrisy.

I will be asking my colleagues to vote against the one thing we can surely do, which is to spend the American taxpayers' money, and I will ask my colleagues to vote for the one thing we must surely do, which is to express the American citizens' regret for past misdeeds and their willingness to accept the responsibility for those deeds, and then go one step beyond this floor and ask my colleagues to join me in once again expressing, in the way we do business with all other Americans and all other citizens in the world, no tolerance for racial prejudice and dirty language, either in our own use or in the use of words by others. If we can do that, we will have done a far, far more important and better thing than to spend somebody else's money for hypocritical efforts.

Mr. CARDIN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the pending amendment.

Mr. Chairman, I am very honored to be a member of the committee that has brought H.R. 442 to the floor. This bill, as I think the last vote of this House indicates, will state very clearly that this Nation made a mistake, that it admits its mistake, it makes an apology, and it takes steps to prevent this type of activity from happening in the future, and, most importantly, it provides for compensation.

Mr. Chairman, let me talk a little bit about the compensation because that is the subject of the amendment that is pending before us now. This amendment would do serious damage to the provisions of H.R. 442 as it relates to compensating those people whose rights were violated.

Where does the $20,000 come from? It did not come out of Congress; it came out of the commission that looked into this. It is a figure, Mr. Chairman, that will at least be acknowledged by the group that has been affected as a fair figure of compensation.

I want to compliment the men and women in this House who worked so hard on this particular bill to bring us a figure of compensation so that the group affected would feel that we are in fact making a good-faith effort to compensate those people whose rights were violated. It avoids the painful experience of going through litigation.

The amendment being offered now would set up a bureaucratic nightmare. It would put one more obstacle in the way of compensating people who have been waiting for 45 years to receive compensation.

Mr. Chairman, it is not the length of time that a person spends in one of these camps, it is not the age of the person who is in the camp, it is the fact that that person's rights were violated and we need a fair system to compensate those people. The bill before us provides that fair system.

Mr. Chairman, I urge the Members to reject the amendment.

Mr. SHUMWAY. Mr. Chairman, will the gentleman yield?

Mr. CARDIN. I am glad to yield to the gentleman from California.

Mr. SHUMWAY. Mr. Chairman, may I just ask the gentleman this question: as the gentleman views the measure of compensation now contained in the bill, is it his position that a person who perhaps was an infant and who spent only days in a camp was aggrieved or violated to the same extent as someone who was an adult and who spent 3 years in the camp?

Mr. CARDIN. Absolutely. That person carries the stigma of having his constitutional rights or her constitutional rights violated. That person was in a circumstance where his personal rights or her rights were taken away.

Let me point out that we have developed a system that is fair to a group, that has been recognized by the group, and I urge the Members not to try to pit people against people. Let us end this chapter in our history.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. CARDIN. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I would agree that not everyone was injured absolutely equally, but I would also say this: If we went to anything like a realistic measure of the degree of injury and we tried to come close to compensating people for that, we would have a bill for 10 times as much as this. As the gentleman from Georgia [Mr. SWINDALL] pointed out, in 1945 dollars we are talking about $2,800. So if we want to go to a more realistic compensation system, first of all, the transaction costs would be enormous in the assessments, but when we go to the harm to people, as our colleague, the gentleman from California, whose hearing was damaged because of inadequate medical treatment in the camps, the people who lost homes and livelihoods and chances of advancement, we would be spending a lot more than $1.2 billion.

So a few people might be getting a little more than we think they should, but a lot will be getting less, and if we were to go away from the uniform form to something where we assess how much each person was owed, we would be spending a lot more money and a lot more time.

Mr. Chairman, this is an element of compromise. It is a compromise that saves the Government money.

Mr. SMITH of Florida. Mr. Chairman, I move to strike the last world.

Mr. Chairman, I would assume only the highest motives should be ascribed to the gentleman's amendment, because I am sure he wants to be ultimately fair or as fair as he can to all those who were injured. But as the gentleman from Massachusetts and the gentleman from Maryland just indicated, how can we be fair if we pit one against the other?

On the technical side, the amendment really is not fair in any event because under the formula there are those who will get much less than the $20,000, but if the time puts them over the $20,000, they are capped anyway. So while there are those who will not reap any benefits, there will be many who will be detrimentally affected.

Secondarily, we heard that the compensation factor may be $2,800 in real terms based on 1942 dollars. What we did not hear and what we ought to hear, because the gentleman from Texas was incorrect, is that this is not taxpayers' money, it is not Treasury dollars, this is the repayment of confiscated property that the Treasury of the United States borrowed, took for no interest for 45 years. In real terms, the confiscated property today is worth literally hundreds of billions of dollars, and to those that had psychological, deep scars inflicted on them, even infants, we are giving a token payment. It is almost to some degree the best we might be able to do under all of the current circumstances, and there are those who will probably say that it is a tokenism.

But it is one way at least that we have of redressing the most bitter example of how people can, under the threat of the possiblity of war, be set upon and pitted against one another even in a democracy, even in this country.

If you want to get some ideas, I say to my colleagues, close your eyes and just imagine yourselves on any given day, a nice warm day, playing out in the yard, 5 years old, and the next thing you know, you and your family are in the back of a truck being taken a few hundred miles away and put behind barbed wire fences, put in the most atrocious housing and held there against your will as American citizens. And these are not Japanese-Americans; these are Americans who are only Japanese by descent.

Everyone of us would today fight viciously to avoid this problem. Yet it happened in this country, and there is no amount of fairness that you can try to overlay that will change the basic reality. We put people behind bars for no reason, we scarred them, we cruelly tortured them, and there is no way to apportion that by a small dollar amount between child and parent.

And if you want to be technical, let us be technical. Where is the legacy that some of those parents would have left their children? It was confiscated. It is gone. So given that the children only spent a few weeks or less behind bars, it is even more cruel because we are depriving them of what they may have gotten from their parents who may be dead now an did not qualify, and we are also taking from them the compensation for that legacy which they no longer have.

This bill is a fine example to some degree of the conscience of Americans who are able to stand up and say that we made a mistake, and even though in its own small way it is inadequate, we will do something to make amends in a small way for what happended before and we will recommit ourselves not to do it again.

Mr. Chairman, as God watches us, this bill as it is written is the right bill to support.

Mr. CHANDLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I disagree with the gentleman from Florida [Mr. SMITH] in this respect: Our purpose here today is not to compensate anybody. We could never adequately do that, whether the person was in a concentration camp for 1 day or for the entire duration of the war.

There are times when we as Americans have to make decisions, not with the logic of our minds but with the feelings of our heart. I think that is what we are doing here today. It would be so easy to trivialize this whole issue in an argument over the dollar amounts that are involved. I think we come close to doing that with a $20,000 figure for everyone involved.

The gentleman from California has given considerable thought to this, and I admire him for that. He is an honored Member of this body. But I think this is a time when we reach into our hearts and say, even if it does not appear to make total sense, let us do it because it is ultimately the right thing to do.

Earlier I heard Members on this floor say there was justification for what was done. I was born in 1942. I did not have the advantage of knowing then what was occurring. I have no historical memory of it. But there can never, in an open, free, and democratic

society, be a justification for taking people from their homes and taking their liberty. We must never allow it to happen again.

Let us not trivialize this any further by the adoption of amendments to this piece of legislation. I have thought about this with my mind for a long time, and until this week I was undecided. But when I turned to my heart, I realized this is what has got to be done.

Mr. FAUNTROY. Mr. Chairman, will the gentleman yield?

Mr. CHANDLER. I yield to the gentleman from the District of Columbia.

Mr. FAUNTROY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, in the 16 years that I have represented the citizens of our Nation's Capital in the Congress without a vote on this floor, I don't know when I have wanted more to cast a vote on behalf of my constituents than on this day and on an issue like this where we can right a tragic and historic wrong.

I cannot vote today because, while the citizens who elect me pay more per capita in Federal taxes than the residents of 49 of the 50 States, my constituents alone among Americans still endure the tyranny of taxation without representation. I am here to appeal to my friends in this body to vote for me on this bill. Vote against the Lungren amendment. Vote for the committee bill.

Mr. Chairman, it brings goose pimples to the skin of many of us who truly love this country to think that on this very day 200 years ago, September 17, 1787, the Founding Fathers signed the Constitution of the United States and thus launched it on its historic and magnificent journey down the corridors of time.

I find myself asking the question, "Had I been privileged to be one among them on this day 200 years ago would I, too, have signed the document?" I have concluded that I would have voted with the Founding Fathers, its glaring imperfections to the contrary notwithstanding. Yes, I know that the Constitution they signed extended the right to vote only to those who owned property; it denied women the right to vote altogether. I know that it declared my forbears to be only three-fifth citizens with no rights that white citizens were bound to respect.

But I would have voted yes on this day 200 years ago. I'd have voted yes because the Constitution they drafted was not a perfect document, but a living document. It was not a finished document, but a document that could grow as our Nation grew. It was not a document that embodied justice, but a document that gave us room for the continued pursuit of justice.

Through 24 amendments to that Constitution we have been wise to right historic wrongs and to extend the blessings of liberty to all within our land. We have an opportunity today to right a wrong done our Japanese-American citizens. You will have an opportunity later this fall to right a wrong that we continue to visit upon the citizens of our Nation's Capital.

It is significant, Mr. Chairman, that our Committee on the District of Columbia is on this historic day filing its report on H.R. 51, a bill to extend full citizenship rights to District residents through statehood.

I urge every Member to ask him or herself. "Would I have voted with the Founding Fathers 200 years ago to end the tyranny of taxation without representation for the Thirteen Colonies?"

If your answer to that question is yes; then I hope you will vote "no" on the Lungren amendment, "yes" on the committee bill and "yes" on the D.C. statehood bill this fall to end the tyranny of taxation without representation for the citizens of the last colony.

Mr. SHUMWAY. Mr. Chairman, will the gentleman yield?

Mr. CHANDLER. I yield to the gentleman from California.

Mr. SHUMWAY. Mr. Chairman, I thank the gentleman for yielding to me.

I would like to respond to the gentleman from Florida that referred to the compensation being given by this bill; and I believe the gentleman referred to the confiscation of property.

Just for correcting the record, I would like to say that there is nothing that I see in the orders that were given, the actions that were taken, that amounted to property confiscation by the Government.

It is true that properties were lost in some cases, sometimes through abandonment, neglect, or sometimes through the fraud of others; but it was not part of the Government relocation program to confiscate property.

I do not think that there is an effort made in this bill to reimburse people for property confiscation; for civil rights violations, yes.

Mr. FRANK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentlewoman from California [Mrs. BOXER].

Mrs. BOXER. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I represent a thriving Japanese-American community in the San Francisco Bay area and on behalf of that community may I say how pleased I am at the way this bill is moving forward to completion with dignity and without the amendment to strike the reparations.

I know we all have special relationships with the people of our districts and I have such a relationship with the Asian community in my district. And there isn't a time that I am in that community, at meetings or church gatherings that I am not told by some young and thriving constituents, of the pain and suffering and the trauma felt by their parents and their grandparents because of America's war relocation effort.

The experience of my dear friends from California, Mr. MATSUI and Mr. MINETA, strikes a chord deep within my soul. Because of my own ancestry, I had aunts and uncles and cousins and grandparents pulled from their homes in Western Europe because of one reason—their ethnicity.

This kind of ripping apart of humanity must have no place in the world—no place!

Our action here today is very significant not just in this country but all over the world. We are saying no, never again!

Whether it's the Japanese-American relocation, or the Armenian genocide, or the Holocaust or apartheid, or the refuseniks in Russia, or solidarity in Poland, we say "No."

I am proud that as we celebrate the Constitution, we commemorate all of its glory in the best possible way by defeating all crippling amendments and passing H.R. 442, the Civil Liberties Act of 1987.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding to me.

I rise in very strong support of H.R. 442 and against the amendment of the gentleman from California.

Much has been said, and I am not going to repeat it; but let me just say that we could not have a better opportunity to do justice on this most historic day than the bill that is before the Members today, H.R. 442.

That is the essence of the Constitution really that provides rights and remedies, privileges to our citizenry, and a process to redress those rights.

Many of the Members today have alluded to the fact that there was mass hysteria, and indeed I am sure there was back in 1941 and 1942; but some of that hysteria was fed by those who knew differently.

I have looked at the Commission on Wartime Relocation and Internment of Citizens report.

I would like to recite one particular paragraph in there which suggests that our Government did in fact know that there was no substance to these suggestions of disloyalty on the part of our Americans of Japanese ancestry.

Contrary to the facts, there was a widespread belief supported by a statement by

Frank Knox, Secretary of the Navy, that the Pearl Harbor attack had been aided by sabotage and fifth column activity by ethnic Japanese in Hawaii. The government knew that this was not true, but took no effective measures to disabuse public belief that disloyalty had contributed to massive American losses on December 7, 1941. Thus the country was unfairly led to believe that both American citizens of Japanese descent and resident Japanese aliens threatened American security.

So first officials in the Government knew there was no substance to it, and permitted it to go forward. It also has been argued that there is no precedent for us providing reimbursement, but we do that every year by attempting to redress those persons arrested, falsely imprisoned by sums that try to make amends for the wrong done to those citizens.

That is what we are going to do, nothing less.

It was said earlier in today's debate, and it is so true, that justice, justice that is in fact delayed is justice denied.

Let us hope we can get on with the business today of trying to make amends.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK was allowed to proceed for 2 additional minutes.)

Mr. LEWIS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Georgia.

Mr. LEWIS of Georgia. Mr. Chairman, I thank the gentleman for yielding to me.

I rise in strong support of H.R. 442 and in opposition to the amendment.

Mr. Chairman, we must learn from this national mistake, this national disgrace, so this kind of action will never be repeated.

It is not enough to promise never to repeat this mistake. As a nation, we must redress for this error in order to do justice for the ideals for which we stand.

The amount of compensation in this legislation is very small in consideration of the losses incurred by Americans who were singled out on the sole basis of their racial ancestry. While we cannot erase the history of injustice done, national recognition for the wrongs committed can serve to renew our commitment to the ideals of personal justice and basic human rights. The time is always right to do what is right.

I think it is time for the Members to oppose this amendment and to support the legislation.

I urge my colleagues to support H.R. 442, the Civil Liberties Act of 1987. This important legislation would implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

During World War II, 120,000 Americans of Japanese ancestry, two-thirds of whom were United States citizens, were incarcerated, some for as long as 2 years, and deprived of their civil rights. None of the Japanese-Americans who were relocated had been convicted of any crime, and the Report of the Commission on Wartime Relocation and Internment of Civilians, published in 1983, concluded that the relocation was not a military necessity. In addition to the loss of jobs, land, and possessions, the relocation presumed disloyalty, shame, and social stigma, and caused tremendous damage to those involved, in terms of loss of personal dignity, identity, and psychological trauma. The scars of this experience are still evident four decades later.

Mr. LOWRY of Washington. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Washington [Mr. LOWRY], who introduced this bill in 1979.

Mr. LOWRY of Washington. Mr. Chairman, I thank the gentleman for yielding to me.

I wish to compliment the gentleman from Massachusetts and the other members of the committee for the outstanding work done.

We worked on this for 8 years. This is a tremendous day to be a Member of the U.S. Congress in this great country, because what we are going to do today is something that will make America proud on this 200th anniversary of the Constitution.

I want to thank every Member and urge defeat of the amendment and urge passage of the bill.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, before I tried to caution the body that we ought to be engaged in self-examination rather than self-flagellation, and I am afraid some historical statements have been made on this floor and entered into the RECORD; and as we reflect on what it was that our country did wrong, we should not hype that, exaggerate that, because we would take the wrong lessons out of it.

To equate what this country did to what happened in World War II, or the Holocaust, or Armenian genocide and other examples of inhumanity to man is, I think, unnecessary. It is not that type of case at all.

Mr. Chairman, the problem is, this debate evidently now is whether or not the money is appropriate or how much money, and little regard is being paid to the historical accuracy of this record.

□ 1450

That would be as unfortunate in one direction as is the stigma that is still attached to some Japanese-Americans remaining from the wrong Executive order that was issued by Franklin Delano Roosevelt. We do not have to be proud of that decision to say it does not equate with the Holocaust or anything like that. We do not have to be proud of that decision to reject the notion that there was torture.

One of the real problems when you read the history of this is that initially reference was made to concentration camps. That was a term that was used long before we discovered what happened in Nazi Germany and long before the term concentration camp got a different connotation.

Depriving Americans of their civil liberties is bad and we ought to apologize for it and act to set the record straight, but suggesting it was worse than it was is also bad.

Mr. Chairman, it has also been mentioned by some that what we are talking about here is not moneys from the taxpayers of America, the General Treasury; rather, it is a return on investment that was gained somehow by the American Government when these people were required to leave their homes. That is just not true. The losses they suffered were losses they suffered when those lands were abandoned or when they were sold at less than appropriate prices.

The Congress of the United States has responded to those property losses on at least three separate occasions. In 1948 we passed a law which dealt with such property claims. We extended that law in 1951 and in 1956. We not only extended it, but we expanded the amount to be recovered from $2,500 to $100,000.

In 1958 there was a further, as I said, extension and expansion of the program. At the time that that extension was coming about in debate in both the House and the Senate side, those groups that supported something to be done to make some recompense for the damages that had been suffered by those who were under the order of President Delano Roosevelt argued that this was the last request that would be made.

Twenty years later, we find ourselves on the floor dealing with it again. Although I will acknowledge I am against individual reparations, it does appear to me that if you do support individual reparations, you ought to consider whether there ought to be a blanket amount of money or whether we should use some discrimination; that is, make some determination as to the seriousness of the loss suffered by the individuals, those who were in for more than 3 years, those who were in for only a few months; it seems to me we ought to seriously look at this.

Last, I would plead with my colleagues, as much as you wish to revisit history and to apologize for the actions of the United States, do not make them worse than they were. Ac-

knowledge what happened. These were not concentration camps. These were not torture camps. This was not Nazi Germany. This was not the Holocaust. This was not the Armenian genocide, and we do a disservice to those who came before us when we suggest that it was.

Mr. BROWN of Colorado. Mr. Chairman, I move to strike the requisite number of words. I rise in support of H.R. 442.

Mr. Chairman, as has been discussed here earlier, we have compensated the victims of this tragic event through damages to their property. The suggestion in this bill, I believe, is a reasonable one. It suggests that we also try and come up with a compensation, even though inadequate, which everyone I think would acknowledge, for the time that they were incaracerated or restrained.

Colorado has a special feeling for this. Out of this tragic event, out of the movement of people involuntarily, Colorado benefited. Some of our finest citizens came from those camps. They are some of our most honest, hardworking and productive human beings, not only in Colorado, but in the Nation.

Mr. Chairman, they are proud people. If we try to compensate them for the insult, other than apologize, I am not sure we can do it. They are not asking for a handout. They are not asking for something that they do not deserve. What they do reasonably feel is that the time they spent in those camps is worth some compensation. It is for that reason that I not only support the bill, but that I support the amendment of the gentleman from California.

Let me suggest how terribly I think this amendment is, because it reaches the very core of why these people are entitled to compensation and why they feel they are entitled to compensation. It is this. They are not asking for a favor or a handout. They are asking only for a portion of what they deserve. This amendment tries to give a reasonable allocation based on the time that they spent in that incarceration.

I would suggest for these very proud people, it is important for this bill not to seem simply like a handout, but to be put in the true perspective which it is, and that true perspective is something they deserve.

We do them a disfavor if we give the person who was in the camp 2 days the same amount that someone who was in there 3 years. We do them a disfavor, because this is not a handout. This is something they are entitled to.

Mr. Chairman, I would urge approval of the amendment of the gentleman from California and approval of the measure as well.

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the pleas to go home, but we are here to do business and this gentleman does not speak on the floor every day on every issue and there are few issues, I might say to my distinguished friend, the gentleman from Massachusetts, that are compelling enough that one must speak. Just introducting a few written remarks by the staff is not adequate, or making a few comments with respect to one of my colleague's amendments earlier is not adequate. There comes a moment when one has to speak, to tell his or her own story vis-a-vis the proposition that is before the body.

One of my distinguished colleagues on the other side of the aisle stated that he was born in 1942 and has no recollection of the war. This gentleman was born in 1935, so I do recall the war and felt the war through the body of a child and saw it through the eyes of a child.

My home was in the middle of the block on Wood Street in West Oakland. On the corner was a small grocery store owned by Japanese people. My best friend was Roland, a young Japanese child, the same age. I would never forget, Mr. Chairman, never forget, because the moment is burned indelibly upon this child's memory, 6 years of age, the day the six-by trucks came to pick up my friend. I would never forget the vision of fear in the eyes of Roland, my friend, and the pain of leaving home.

My mother, as bright as she was, try as she may, could not explain to me why my friend was being taken away, as he screamed not to go, and this 6-year-old black American child screamed back, "Don't take my friend."

No one could help me understand that, no one, Mr. Chairman.

So it was not just Japanese-Americans who felt the emotion, because they lived in the total context of the community and I was one of the people who lived in the community.

So I would say to my colleagues, this is not just compensation for being interned. How do you compensate Roland, 6 years of age, who felt the fear that he was leaving his home, his community, his friend, RON, the black American, who later became a Member of Congress; Roland, the Japanese-American, who later became a doctor, a great healer.

This meager $20,000 is also compensation for the pain and the agony that he felt and that his family felt. This meager $20,000, in 1942 terms $2,800, is also compensation for the thousands of dollars of personal belongings that were strewn on the streets, on 10th and Wood Streets in West Oakland in 1942, because in case you do not know it, they could only take what they could carry.

So the little football that we played with in the streets, the games that we played that took up hours of our time in the streets, the furniture that we walked on and wrestled upon as children in 1942 in the streets; so this $20,000 and this formula that if you were in for 1 day you get a few nickels, if you are in for 3 years you get the whole $20,000, as if we could play that game.

This is not about how long you were in prison. It is about how much pain was inflicted upon thousands of American people who happened to be yellow in terms of skin color; Japanese in terms of ancestry, but this black American cries out as loudly as my Asian-American brothers and sisters on this issue.

So this formula, while well intended, does not in any way address the reality of the misery, Mr. Chairman. It must be rejected out of hand because it does not address the misery.

Vote for this bill without this amendment and let Roland feel that you understood the pain in his eyes and the sorrow in his heart as he rode away screaming, not knowing when and if he would ever return.

Mr. MINETA. Mr. Chairman, I rise in opposition to the gentleman's amendment to H.R. 442. The gentleman has just introduced us to what can only be described as the bell-curve theory of civil rights.

Mr. Chairman, either you have rights or you don't. Our Constitution is based on the principle of "equal rights for all." There is nothing in that fine document which says one's individual rights are somehow proportional to one's age or earning power.

Yet that is precisely what this amendment does: it correlates damages to a person's age and length of time in camp. But let me remind this body that every person who was evacuated from the west coast—from infants right on up to grandmothers—suffered a wholesale abridgment of civil rights. Those who were age 10 suffered the same humiliation as those of 20 or 50 or 80.

The Commission on Wartime Relocation and Internment of Civilians, after thoroughly studing these events, recommended individual compensation of $20,000 per person. The Judiciary Subcommittee on Administrative Law and Governmental Relations approved such compensation by a voice vote. The full Judiciary Committee overwhelmingly saw fit to keep the individual lump-sum compensation to survivors.

The suggestion of some kind of per diem payment for one's loss of rights directly contradicts the intent of the bill. Under H.R. 442, the restitution is not for lost property and wages, as great as those losses were, but for the sweeping loss of individual rights. Every person who was evacuated and interned lost his or her rights. This Congress should not institute a subminimum wage for the civil rights of minors.

In addition to the problems of substance, this amendment would impose horrendous administrative problems in determining individual payments.

Imagine trying to document how many months and days each internee spent in camp, and what the age was—in years, months, and days—for every child upon both entering and leaving camp! Would the administrators need photos of birthday cakes with candles to help gather proof? The identification of every person who is eligible will not be a difficult job; counting birthdays certainly would be an impossible one.

If the gentleman's amendment is an attempt to save money, it will have the reverse effect. More administrative money will be spent on verifying unnecessary data than would be saved with this penny-ante shell game of individual rights.

Mr. Chairman, the Judiciary Committee overwhelmingly agreed that those interned suffered a wholesale abrogation of their rights, and as a result were each entitled to a lump-sum payment. To do otherwise would be to tamper with the scales of justice.

I ask my colleagues to vote against this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. SHUMWAY].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. SHUMWAY. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. One hundred two Members are present, a quorum.

Does the gentleman from California [Mr. SHUMWAY] insist on his request for a recorded vote?

Mr. SHUMWAY. I do, Mr. Chairman.

A recorded vote was refused.

So the amendment was rejected.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GEKAS. The Chairman counted the number of members on the question of whether or not a recorded vote should be taken, but I did not hear a vote being taken on the issue.

The CHAIRMAN. A voice vote was taken first. The gentleman from California requested a recorded vote and it takes 25 in the Committee of the Whole, and only 21 were standing.

□ 1505

The CHAIRMAN. Are there further amendments?

The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MURTHA] having assumed the chair, Mr. GRAY of Illinois, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 442) to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, pursuant to House Resolution 263, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. LUNGREN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 243, noes 141, answered "present" 1, not voting 50, as follows:

[Roll No. 321]

AYES—243

Ackerman	Cheney	Evans
Akaka	Clay	Fascell
Alexander	Clinger	Fazio
Anderson	Coelho	Feighan
Andrews	Coleman (TX)	Fish
Annunzio	Conte	Flake
Anthony	Conyers	Florio
Aspin	Courter	Foglietta
Atkins	Coyne	Foley
AuCoin	Craig	Ford (MI)
Badham	Crockett	Frank
Bates	Dannemeyer	Frost
Beilenson	Davis (IL)	Gallo
Bennett	Davis (MI)	Garcia
Bereuter	DeFazio	Gejdenson
Bilbray	Dellums	Gibbons
Boehlert	Derrick	Gilman
Boland	DeWine	Gingrich
Bonior (MI)	Dickinson	Glickman
Bonker	Dicks	Gonzalez
Bosco	Dingell	Gradison
Boucher	Dixon	Gray (IL)
Boxer	Donnelly	Gray (PA)
Brennan	Duncan	Gunderson
Brooks	Durbin	Hall (OH)
Brown (CA)	Dwyer	Hamilton
Brown (CO)	Dymally	Hawkins
Bruce	Early	Hayes (IL)
Bustamante	Eckart	Hefner
Campbell	Edwards (CA)	Herger
Cardin	Edwards (OK)	Hertel
Carr	English	Hochbrueckner
Chandler	Espy	Horton
Houghton	Morella	Skaggs
Howard	Morrison (CT)	Skeen
Hoyer	Morrison (WA)	Slattery
Hughes	Mrazek	Slaughter (NY)
Hyde	Murphy	Smith (FL)
Jacobs	Murtha	Smith (IA)
Jeffords	Nagle	Smith (NJ)
Johnson (CT)	Natcher	Smith, Robert (OR)
Jones (NC)	Nelson	Snowe
Jontz	Oakar	Solarz
Kaptur	Oberstar	Spratt
Kastenmeier	Obey	Staggers
Kennedy	Ortiz	Stallings
Kennelly	Owens (NY)	Stark
Kildee	Owens (UT)	Stokes
Kleczka	Pashayan	Studds
Kostmayer	Pease	Swift
Lagomarsino	Pepper	Swindall
Lancaster	Perkins	Synar
Leach (IA)	Pickle	Tauke
Lehman (CA)	Porter	Torres
Lehman (FL)	Price (IL)	Torricelli
Leland	Price (NC)	Traficant
Levin (MI)	Rahall	Traxler
Levine (CA)	Rangel	Udall
Lewis (GA)	Ravenel	Valentine
Lipinski	Rhodes	Vento
Lowry (WA)	Richardson	Visclosky
Luken, Thomas	Rinaldo	Volkmer
MacKay	Rodino	Vucanovich
Madigan	Roe	Walgren
Manton	Rose	Waxman
Markey	Rostenkowski	Weber
Martinez	Roukema	Weldon
Matsui	Rowland (CT)	Wheat
Mazzoli	Roybal	Whitten
McCloskey	Sabo	Williams
McDade	Saiki	Wilson
McGrath	Savage	Wolf
McHugh	Sawyer	Wolpe
McMillen (MD)	Saxton	Wortley
Mfume	Scheuer	Wright
Mica	Schneider	Wyden
Miller (CA)	Schuette	Yates
Miller (WA)	Schulze	Yatron
Moakley	Schumer	Young (AK)
Molinari	Sharp	
Mollohan	Shays	
Moody	Sikorski	

NOES—141

Applegate	Goodling	McEwen
Archer	Grandy	McMillan (NC)
Armey	Grant	Meyers
Ballenger	Green	Michel
Barnard	Gregg	Miller (OH)
Bartlett	Guarini	Montgomery
Barton	Hall (TX)	Moorhead
Bateman	Hammerschmidt	Myers
Bentley	Hansen	Nichols
Bevill	Harris	Nielson
Bilirakis	Hastert	Olin
Bliley	Hatcher	Packard
Boulter	Hayes (LA)	Parris
Broomfield	Hefley	Patterson
Buechner	Hiler	Penny
Bunning	Holloway	Petri
Burton	Hopkins	Pickett
Byron	Hubbard	Pursell
Callahan	Huckaby	Ray
Carper	Hunter	Regula
Chapman	Inhofe	Ridge
Clarke	Ireland	Ritter
Coats	Jenkins	Roberts
Coble	Johnson (SD)	Robinson
Coleman (MO)	Jones (TN)	Rogers
Combest	Kanjorski	Roth
Cooper	Kasich	Rowland (GA)
Daniel	Kolbe	Schaefer
Darden	Kyl	Sensenbrenner
DeLay	Leath (TX)	Shaw
DioGuardi	Lewis (FL)	Shumway
Dorgan (ND)	Lightfoot	Shuster
Dowdy	Livingston	Sisisky
Dreier	Lott	Slaughter (VA)
Dyson	Lowery (CA)	Smith (TX)
Emerson	Lujan	Smith, Denny (OR)
Erdreich	Lukens, Donald	Smith, Robert (NH)
Fawell	Lungren	Solomon
Fields	Mack	Stangeland
Flippo	Marlenee	Stenholm
Frenzel	Martin (IL)	Stratton
Gallegly	Martin (NY)	Stump
Gaydos	McCandless	
Gekas	McCollum	

Sundquist	Thomas (CA)	Whittaker
Sweeney	Thomas (GA)	Wylie
Tallon	Upton	Young (FL)
Taylor	Walker	

ANSWERED "PRESENT"—1

Mineta

NOT VOTING—50

Baker	Gordon	Panetta
Berman	Henry	Pelosi
Biaggi	Hutto	Quillen
Boggs	Kemp	Roemer
Boner (TN)	Kolter	Russo
Borski	Konnyu	Schroeder
Bryant	LaFalce	Skelton
Chappell	Lantos	Smith (NE)
Collins	Latta	Spence
Coughlin	Lent	St Germain
Crane	Lewis (CA)	Tauzin
Daub	Lloyd	Towns
de la Garza	Mavroules	Vander Jagt
Dornan (CA)	McCurdy	Watkins
Downey	Neal	Weiss
Ford (TN)	Nowak	Wise
Gephardt	Oxley	

□ 1520

The Clerk announced the following pairs:

On this vote:

Ms. Pelosi for, with Mr. Quillen against.

Mr. Lantos for, with Mr. Coughlin against.

Mr. Kemp for, with Mrs. Smith of Nebraska against.

Mr. Berman for, with Mr. Crane against.

Mr. Lewis of California for, with Mr. Baker against.

Mr. Konnyu for, with Mr. Oxley against.

Mr. JONES of Tennessee and Mr. JOHNSON of South Dakota changes their votes from "aye" to "no".

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to implement recommendations of the Commission on Wartime Relocation and Internment of Civilians."

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN H.R. 442, CIVIL LIBERTIES ACT OF 1987

Mr. FRANK. Mr. Speaker, I ask unanimous consent that the clerk may be allowed to make technical and conforming changes in the bill just passed.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERSONAL EXPLANATION

Mr. BORSKI. Mr. Speaker, I was unavoidably absent on September 17 when the House of Representatives considered H.R. 442, the Civil Liberties Act of 1987. Had I been present, I would have voted "aye" on final passage and "nay" on any weakening amendments.

H.R. 442 offers long overdue redress to Americans of Japanese descent whose constitutional rights were violated by our Government during World War II. The legislation is based on the recommendations of the Commission on Wartime Relocations and Internment of Civilians.

It is fitting that the House of Representatives approve H.R. 442 as we celebrate the bicentennial of the U.S. Constitution. Passage of the bill will reaffirm our commitment to the 200-year-old document that is the foundation of our great democracy.

REPORT ON HOUSE JOINT RESOLUTION 362, CONTINUING RESOLUTION, 1988

Mr. WHITTEN, from the Committee on Appropriations, submitted a privileged report (Rept. No. 100-306) on the joint resolution (H.J. Res. 362) providing temporary restrictive financing not to exceed the current level for the fiscal year 1988 which begins October 1, 1987 for programs covered under the 13 regular appropriation bills, which was referred to the Union Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3030, AGRICULTURAL CREDIT ACT OF 1987

Mr. WHEAT, from the Committee on Rules, submitted a privileged report (Rept. No. 100-307) on the resolution (H. Res. 265) providing for the consideration of the bill (H.R. 3030) to provide credit assistance to farmers, to strengthen the Farm Credit System, and for other purposes, which was referred to the House Calendar and ordered to be printed.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. (Mr. WILSON). Is there objection to the request of the gentleman from Washington?

There was no objection.

ADJOURNMENT TO MONDAY, SEPTEMBER 21, 1987

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

PERSONAL EXPLANATION

Mr. FOLEY. Mr. Speaker, on a personal note, I was absent on votes No. 315 and No. 316 on September 15, 1987. Had I been present I would have voted "aye."

AMENDING THE EXPORT-IMPORT BANK ACT OF 1945

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance and Urban Affairs be discharged from further consideration of the bill (H.R. 3289) to amend the Export-Import Bank Act of 1945, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. LEACH of Iowa. Mr. Speaker, reserving the right to object, I do not object, but simply would like to make the point that the minority has no objection to this, and in particular we wish to express our appreciation for the leadership of the gentleman from New York [Mr. GARCIA] in bringing to the floor a bill at the request of the administration in such a very timely fashion.

Mr. GARCIA. Mr. Speaker, will the gentleman yield under his reservation?

Mr. LEACH of Iowa. I yield to the gentleman from New York.

Mr. GARCIA. I thank the gentleman for yielding.

Mr. Speaker, section 19 of Public Law 99-472, the Export-Import Bank Act Amendments of 1986, establishes a tied aid credit program at the Bank, and authorizes a $300 million appropriation for fiscal year 1987 and fiscal year 1988 to be used for grants made under the tied aid credit program. The tied aid credit program was designed as a "war chest" for Eximbank to target its own credits in ways which would advance negotiations in the OECD for rules to constrain misuse of tied aid credits by other countries for commercial advantage. It was expected that each Exim tied aid credit package would combine a grant with a standard export credit.

Before authorization of the $300 million fund for fiscal year 1987 and fiscal year 1988 and the initial appropriation of $100 for fiscal year 1987, Eximbank had authorized selected tied aid credits on soft terms for the same war chest purposes. Because no grant funds were yet available, these were 100 percent credits with low interest rates and long repayment term. The 1986 act stated that the fund appropriation is available to reimburse the Bank for the subsidy cost of these war chest tied

aid credits authorized by the Bank in fiscal year 1986.

The Bank has now determined that there may be some instances where it is more appropriate to use a 100-percent soft loan—such as was done in fiscal year 1986—for support of a transaction under the tied aid credit program rather than a combination of a grant and a regular Eximbank loan as originally envisioned. In fact, the Bank has such a case now pending. This legislation would simply permit the Bank to reimburse its account for the amount of the subsidy; that is, grant element, in any such soft loan authorized in fiscal year 1987 and 1988, the same as it is allowed to do for fiscal year 1986. No additional budget authority or funds would be required because the amount would come out of the $100 million appropriation already available for the tied aid credit program in fiscal year 1987 and from whatever Congress provides for the program for fiscal year 1988.

Mr. LEACH of Iowa. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the bill as follows:

H.R. 3289

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15(c)(2) of the Export-Import Bank Act of 1945 (22 U.S.C. 635i-3(c)(2)) is amended by striking out "during fiscal year 1986" and inserting in lieu thereof "during fiscal years 1986, 1987, and 1988".

The bill was ordered to be engrossed, and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

EMBARGO AGAINST MEXICAN TUNA FISH

(Mr. ANDERSON asked and was given permission to address the House for 1 minute.)

Mr. ANDERSON. Mr. Speaker, it is with more than the usual forethought that I address the House today and bring before this body my call for an embargo on the part of the United States against Mexico. I ask that this embargo be placed upon frozen, fresh, and canned tuna fish. Recent actions by vessels of the Mexican Navy leave me no choice but to ask for such an embargo.

Allow me to give a background summary. In July 1980, Mexican naval vessels seized an American tuna boat outside the 12-mile territorial jurisdiction of that country and refused to release the boat. The United States retaliated by imposing an embargo on Mexico at that time.

In August 1986, little more than a year ago, the United States finally lifted the 1980 embargo. This action was announced as a gesture of goodwill by the President and was predicated upon the Secretary of State's decision to lift the embargo.

The 1986 decision to lift the embargo on Mexico was based upon the Secretary of State's determination that our southern neighbor was meeting the condition that "sufficient time" had elapsed since a seizure incident. Thus, the Secretary of State decided that, although there had been a seizure in 1983, 3 years from that date represented a sufficient amount of elapsed time to justify lifting the 1980 embargo.

In February 1987, 6 months after the lifting of the embargo of 1980, two American tuna boats were seized off the northern tip of Baja California. There were many calls to my office requesting an immediate reimposition of the embargo but since the position of the tuna boats at the time of seizure was somewhat in doubt, I deferred from a call for an embargo. It was not easy to exercise patience on that occasion for the fines imposed by the Mexican Government were high and it was particularly galling for the owners of the seized vessels to have to buy back their own fishing nets from the authorities who had seized them. For a fisherman, his nets are his livelihood. It is almost as if a person's automobile was released to the owner only to be told that the tires would have to be separately repurchased. The Mexican Government practice of having tuna fishermen buy back their own confiscated nets is an insult to good reason and judgment.

Nonetheless, in February's incident the fines were paid, the tuna boats released and the incident was closed although the request that the United States reimpose the embargo was not forgotten by the captains and the leaders of the southern California tuna fishing industry.

This brings us to the present. On September 3, 1987, the *Mauretania,* a San Pedro based fishing vessel was seized off the coast of Mexico by a Mexican naval vessel. The *Mauretania* was fishing well beyond the recognized 12-mile limit for tuna and was therefore very much engaged in legal fishing. The boat was escorted into the port of La Paz, detained, fined $30,000, suffered the loss of their legal catch of 207 tons of tuna and once again made to undergo the farce of buying back their own nets to the tune of $25,000. If we consider the current cost of tuna at $1,050 a ton, the total loss to the *Mauretania* for legal fishing off the coast of Mexico is close to $275,000. Clearly this violation is an outrage.

Mr. Speaker, on behalf of the tuna fish owners and operators of southern California, I call upon the Secretary of State to take the necessary steps to impose an immediate embargo on the import of any Mexican frozen, fresh, or canned tuna into the United States. This action by the Secretary of State would be no more than what is called for. Any other action on the part of the Secretary of State would be unacceptable to me. I ask that the embargo remain in effect until such time as a workable understanding be reached with Mexico that would once and for all protect the legal activities of the tuna fishermen of this country.

It has to be true that a reasonable approach between reasonable people can bring this nagging problem to a close. All that the fishermen of southern California wish to do is to legally pursue their livelihood. Once that livelihood is not endangered then an embargo is not necessary. Until then an embargo is mandatory.

TAKE THE AVIATION TRUST FUND OFF BUDGET

(Mr. INHOFE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INHOFE. Mr. Speaker, the Federal Government is pulling a scam on air travelers. Twice as many people are flying today as flew in 1978 before deregulation. Each of these air travelers has paid an 8-percent tax on his ticket, supposedly to fund the equipment and personnel necessary to provide a safe trip and the airport development to handle the increased volume of passengers.

Guess again, $5.6 billion of the money raised from these taxes have not been used for the intended purposes. That money is sitting in the trust fund unused in order to make our Federal budget deficit look a little less horrendous than it is. That's deceptive and immoral.

Does our aviation system need all that money? You bet it does. We need more air traffic controllers, we need modern air traffic control equipment, and we need expanded airport capacity.

We have fewer air traffic controllers now than in 1978, but twice as many passengers lives depend on their efforts. We import vacuum tubes from the Soviet Union for our antiquated air traffic control equipment because they aren't manufactured in the United States anymore. The last major airport built in this country was completed 13 years ago, before deregulation and the incredible increase in air traffic.

We've been hearing a lot about delays and air safety this summer. To address those problems, we must expand the capacity of our aviation system. That means freeing the money in the trust fund to be used for what the taxes were intended to be used for. The only way to do that is to take the trust fund off budget. We owe it to air travelers and their families to take this action.

The Reagan administration has been a big proponent, and I think rightfully so, of user fees. It should be the biggest proponent of making sure this user fee is used as the Government promised it would be.

HAPPY BIRTHDAYS ARE IN ORDER TODAY

(Mr. BARTON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Speaker, happy birthdays are in order to our country today. Today is the 200th anniversary of our Constitution in Philadelphia in 1987. Yesterday we celebrated that event with an extravaganza here on the steps of the Capitol. Today our President and many Members of this body are going to Philadelphia to reenact that signing. The Constitution is a living document as exemplified in hearings going on in the other body for confirmation of a Supreme Court Justice. There are some things we can do in this body to insure that it remains a living document here also. Today would be an excellent day to bring to the floor a balanced budget amendment for this body to vote on. There is a discharge petition being readied to make that occur. Today would also be an excellent day to consider some of the reforms that the Republican conference sent to the Speaker of the House dealing with our budget process, rulemaking process, committee ratios, many other activities.

Happy 200th birthday, America. Hopefully we will have another 200 years as strong as the first 200.

STRONG SUPPORT FOR LINE-ITEM RESCISSION LEGISLATION

(Mr. JOHNSON of South Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of South Dakota. Mr. Speaker, as we pause today to observe the 200th anniversary of our Nation's Constitution, I am reminded of what I heard recently as I traveled across South Dakota, holding a dozen public "Town and Country" meetings in all parts of the State.

More than 500 people took part, and they were nearly unanimous in expressing serious concern about the dangerous Federal budget deficit.

I found strong support for the line-item rescission legislation that I have introduced, for a budget summit conference of Government leaders, and for a balanced budget amendment to the Constitution.

South Dakotans realize that the budget deficit is costing America $135 billion this year in interest on the national debt. This money is coming out of the pockets of middle class taxpayers and going into the vaults of wealthy special interests—both here and overseas—who collect windfall interest payments.

What we've got is a pickpocketing Uncle Sam playing the role of a 20th-century Robin Hood—in reverse.

My South Dakota constituents are saying it's time for us to reduce this deficit with the same spirit of resolve and determination that our forebears demonstrated when they created our Constitution 200 years ago.

□ 1535

AIR SAFETY LINKED TO FREEING UP TRUST FUND MONEYS

(Mr. VISCLOSKY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, the safety and convenience of our Nation's aviation consumers depends upon the removal of the Airport and Airway Trust Fund from the Federal budget. Such action would ensure that the $2.8 billion authorized in H.R. 2310 is spent as intended.

I believe it is fundamentally unfair that the 8-percent ticket tax paid by aviation consumers is not being fully used to improve an air transportation system which is increasingly unsafe and inefficient. Unsettling as it may be, statistics indicate that the planes on which we travel today are more likely to crash than they were a year ago and the aviation consumer is more prone to be the victim of inconvenient delays.

Unfortunately, the situation appears to be getting worse. Plans to modernize the American Air Traffic Safety System are already 2 years behind schedule. Our air traffic controllers are relatively inexperienced and hopelessly overworked. The number of near midair collisions has increased 50 percent in the first half of 1987 compared to the same period last year.

Ironically, dedicated funding already exists which is not being used to correct this situation. In fact, $5.6 billion in unspent revenues is currently sitting in the aviation trust fund which could be used to fund safety, capacity, and noise improvements, and the trust fund surplus continues to grow. At the present rate, the surplus will reach $10 billion by fiscal year 1989 and $12 billion by 1991.

Yet, instead of being used for improvements, the aviation trust fund has essentially become a pawn in a budget game which has nothing to do with air transportation. I believe it is time to put the aviation trust fund to work.

Taking the trust fund off budget is fiscally responsible. The Congressional Budget Office recently reported that the removal of the trust fund from the budget would actually reduce the deficit starting in fiscal year 1990. This fact contradicts many previous assumptions regarding the role of the trust fund in the budget process.

Failure to expend the trust fund for aviation improvements represents a dangerous deception which jeopardizes the lives of the American public. I urge my colleagues to support the release of the trust fund for its intended purpose.

FIFTIETH ANNIVERSARY OF THE DAVID TAYLOR NAVAL SHIP RESEARCH AND DEVELOPMENT CENTER

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, 50 years ago, in the twilight years before World War II, ground was broken in Carderock, MD, for a new experimental model basin to replace the old one at the Washington Navy Yard. Not long afterwards, the facility was named after Rear Adm. David Taylor, who designed and supervised the construction of the old experimental model basin and spent 20 years as its director.

During World War II and especially thereafter, the facility now known as the David Taylor Naval Ship Research and Development Center has played a crucial role in developing a Navy to match America's commitment to leadership of the free world. It has responded to the challenge of new technology with vigor and enthusiasm, designing, evaluating, and testing many of the ships in the postwar nuclear Navy.

Today, the Taylor Center is the Navy's principal research, development, testing, and evaluation center for naval vehicles and is considered the finest establishment of its kind in the world. Tomorrow, the Taylor Center will be celebrating its anniversary. I know that my colleagues join me in congratulating the center for having reached this milestone.

URGING THE REAGAN ADMINISTRATION TO SUSPEND MFN STATUS FOR ROMANIA

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, I have a very serious matter that I want to bring to the attention of our colleagues here today.

As we know, Mr. Speaker, the House suspended MFN for Romania because, first, a Catholic priest said that Christmas should be a holiday and they beat him and killed him. Second, they bulldozed a synagogue, the last Spanish synagogue. They bulldozed the Seventh Day Adventist Church while the people were in it.

Mr. Speaker, this administration, the Reagan administration, and the State Department, even with all that, does not want to suspend MFN.

Mr. Speaker, I am sad to say today that since the Reagan administration has granted the continuation of MFN, the Romanian Government has knocked down two more churches. They have knocked down two churches to make room for what they call a boulevard, the boulevard which is called Victory of Socialism. So the Reagan administration and the State Department are allowing the Ceausescu administration to continue to bulldoze those churches so they can name a boulevard, and they are calling the boulevard Victory of Socialism.

Mr. Speaker, where is the State Department? Where is the White House when 23 million people are being persecuted in Romania and we get nothing from the Reagan administration except one thing? We get only one thing, Mr. Speaker—silence.

Mr. Speaker, I hope this Reagan administration wakes up and does what is right and, by Executive order, suspends MFN and stands on the side of the people that want freedom and human rights and liberty.

URGING A RATIONAL CONSIDERATION OF THE ACID RAIN PROBLEM

(Mr. COATS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COATS. Mr. Speaker, the National Acid Rain Precipitation Assessment Program's interim report has been released today. There is a story in the Washington Post about it, and I think those of us who are interested in the acid rain issue ought to take a close look at its findings.

Only a small portion, a small fraction, in fact, of U.S. lakes and streams have been damaged by acid rain, and the damage is not likely to worsen significantly in the near future. That is the conclusion of this interim report.

Also there is little evidence, the report indicates, to support the theory that acid rain is adversely affecting our forests. Natural stresses and insects and diseases are likely to have more serious effects, according to this report. SO_2 projections into the next century are likely to decline as new technology is implemented.

This is not a time to relax our environmental safeguards. I am not advocating that. I am simply saying that as we look at this acid rain question, it is clear there is no need to rush to judgment. Let us give thoughtful, careful, rational consideration as to how we proceed in dealing with the solution to this problem. Let us not rush into a solution that we might all regret later.

ETERNAL VIGILANCE IS THE PRICE TO SECURE THE BLESSING OF LIBERTY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 5 minutes.

Mr. ALEXANDER. Mr. Speaker, the Government of the United States was organized 200 years ago today, 12 years after our forebears declared independence from England.

It was the first time in history that the principles upon which a nation was to be founded were prescribed in a written document—the Constitution. The preamble clearly defines the purposes of our Government. We all know by heart those immortal words:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

We Americans love freedom. And more than other provisions, we notice the provisions granting freedom. In order to "secure the blessings of liberty * * *" to American citizens the founding fathers divided the powers of Government among three separate branches: legislative, executive, and judicial; reserving to the States those powers not granted to the Federal Government. Equally important, the framers created a laborious process through which the eternal struggle between protecting personal liberty and promoting economic interests may be reconciled.

On the occasion of the signing of the Constitution, Benjamin Franklin admonished future generations when he said: "We have created a Republic if you can keep it."

In walking through the Capitol corridor today to the Hall of the House of Representatives I stopped for a moment to ponder the thoughtful words of the late Mr. Justice Louis Brandeis that are preserved there seemingly in response to Mr. Franklin:

> The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding.

In his genius Thomas Jefferson prescribed the remedy: "Eternal vigilence is the price of freedom."

At separate times Jefferson also suggested:

> Enlighten the people and tyranny and oppression will vanish like evil spirits at the dawn of day.
>
> * * * * *
>
> If once the people become inattentive to public affairs you and I, and Congress, and assemblies, Judges and Governors shall all become wolves.

Mr. Speaker, indeed we are blessed to be American citizens. It is my hope that everyone of our generation will be vigilant to support the Constitution. It is a miracle and we have an obligation as citizens enjoying the blessings of liberty to pass it intact to future generations.

JUDGE BORK AND THE RULE OF LAW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. CONYERS] is recognized for 60 minutes.

Mr. CONYERS. Mr. Speaker, it may be providential that the hearings on the nomination of Judge Robert Bork to the Supreme Court of the United States should coincide with the celebration of the 200th anniversary of the Federal Constitution.

The coincidence of these two events requires us to take a special look at the constitutional views of Judge Bork and to determine whether they are consistent with and likely to enhance and support the constitutional system under which we the people of the United States govern ourselves. Such an examination reveals that Judge Bork is an extremist whose views are outside the constitutional mainstream and threaten the stability of the social compact under which a heterogeneous people coexist.

If there are two principles fundamental to the American constitutional system they are: First, a commitment to the rule of law; and second, a commitment to individual rights. Judge Bork's constitutional ideology is inconsistent with both. His writings over many years, both as an academic and as a jurist, demonstrate an authoritarian contempt for the rule of law as well as a disdain for the rights of minorities.

The "Saturday night massacre" will long be remembered as one of the most serious challenges to constitutional government in our Nation's history. President Nixon ordered the firing of Watergate Special Prosecutor

Archibald Cox, despite a commitment to Congress, in order to evade a court order to reveal incriminating documents. According to the only Federal court to ever review those events, the firing of Cox was an illegal act which engendered "considerable public distrust of government" and precipitated "a lack of confidence in the administration of justice."

We cannot forget that it was Solicitor General Robert Bork who carried out President Nixon's order after the Attorney General and Assistant Attorney General both resigned in protest.

The firing of Cox was one of the offenses listed in the Bill of Impeachment which forced Richard Nixon from office. Shall the man who actually executed the outrageous act be rewarded with appointment to the highest court in the land? Shall we seat on the Supreme Court a man who undermines trust in Government and confidence in the administration of justice?

While others with a more developed sense of constitutional processes were offended by Nixon's action, Robert Bork seems quite at ease with an imperial Presidency claiming immunity from the rule of law. Indeed, to this day, Judge Bork appears to contend that the special prosecutor—independent counsel—law adopted after Watergate in an effort to insulate investigations of executive branch wrongdoing from improper influence is an unconstitutional infringement of Presidential powers. He maintains this position despite the specific and unambiguous provision of article II, section 2 of the Constitution authorizing Congress to vest the appointment of inferior officers in the courts or in Congress itself.

Judge Bork's commitment to an Executive beyond the reach of the rule of law is further exemplified by his narrow views concerning standing to sue, including his negative view of congressional standing to challenge actions by the executive branch.

The case of *Barnes* v. *Klein*, (759 F.2d 21, D.C. Cir., 1984), involved a dispute between Congress and the President over an attempted pocket veto. Judge Bork dissented from the court of appeals' approval of jurisdiction, declaring: "We ought to renounce the whole notion of congressional standing."

It was Judge Bork's position that such disputes ought to be resolved politically. The reality of that position is that the President always wins. Since such disputes involve the legal effectiveness of legislation, and since the President controls the administration and execution of the laws, unless Congress can appeal to a third body to resolve the dispute, the Executive wins by default.

Indeed, the potential defendant always wins when access to a court is denied. That's what is so pernicious about Judge Bork's general views in regard to standing to sue, including his expansive view of sovereign immunity. Sovereign immunity is a medieval doctrine that assumes the sovereign can do no wrong. In its modern form, it protects the Government from suit even if individuals have suffered a violation of their rights. Judge Bork has frequently argued to expand such immunity—despite the fact that under our system it is supposed to be the people, not the Government, which is truly sovereign. For example, in the case of *Bartlett* v. *Bowen* (816 F.2d 695, D.C. Cir., 1984, en banc), Judge Bork argued that the Government was immune from challenges to the Federal Medicaid Program.

Thus, for Judge Bork, a narrow conception of the standing doctrine is another means by which he helps to protect lawless and authoritarian behavior by Government bureaucrats.

In the first great constitutional case, Marbury versus Madison, Chief Justice John Marshall remarked that there can be no rights without remedies. By restricting judicial remedies, Judge Bork eliminates individuals' rights and undermines the rule of law.

Judge Bork's view of our constitutional structure seems to be upside down. He appears to suffer from some rare form of constitutional dyslexia. Rather than a system to maximize individual freedom and keep Government off our backs, his constitutional structure seems modeled after that of totalitarian regimes which believe that Government officials are immune from public scrutiny and accountability and citizens have few rights which Government officials have to respect.

That conclusion is further supported by Judge Bork's record in regard to enforcement of the Freedom of Information Act, another Watergate reform designed to make Government more open and accessible. In seven split decisions involving the FOIA in which Judge Bork participated in the court of appeals, he voted against public access to information and in favor of Government secrecy in every case.

JUDGE BORK AND IRAN/CONTRA

The Bork nomination is particularly distressing at a time when this Nation faces its greatest challenge to the rule of law since Watergate.

Throughout this past summer, the Nation witnessed the spectacle of White House personnel claiming that they could operate outside the law—with or without the President's approval. We saw a lieutenant colonel assigned to the National Security Counsel claim before the Nation that the President's men were not bound by congressional mandates restricting the use of Government resources and Government funds in the conduct of foreign relations. We saw a string of Executive officials explain that they felt that they could ignore statutory requirements of congressional notification and consultation when they found it inconvenient to comply. And we saw a President smilingly acquiesce in these claims of Executive authority and hail the lawbreakers as patriots.

And when the Attorney General was forced by congressional demands and public outcry to apply to the courts for appointment of independent counsel to investigate some of these executive branch transgressions, we saw the same Attorney General claim, in the name of the President, that the independent counsel law was an unconstitutional invasion of executive authority.

These lavish claims of Presidential power may be anticipated from officials of the executive branch attempting to justify their own actions. Generally, it is left to the judicial branch to resolve such constitutional disputes and to establish the constitutional limits of the powers of the other branches. And the Federal courts have been faithful to their constitutional obligation to contain the other branches within their appropriate limits. More than 100 years ago the Supreme Court said:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law and are bound to obey it. (*United States* v. *Lee*, 106 U.S. 16, 1882.)

But confirmation of Judge Bork would place on the Supreme Court the foremost exponent of unbridled Executive power, a man who rejects outright any meaningful role for the Congress in foreign affairs. In 1971, then-Professor Bork defended President Nixon's decision to bomb Cambodia, insisting that Congress had no power to limit the President' discretion to stage the attack. In an article in the American Journal of International Law, Bork claimed for the President authority to order the attack on alleged Vietnamese sanctuaries in Cambodia under "the inherent powers of the Presidency" as well as pursuant to congressional authorization which he found contained in the Gulf of Tonkin resolution.

Judge Bork has asserted Executive control over foreign affairs in other contexts as well. Thus, he testified that Congress had no power to require Executive intelligence agencies to obtain a warrant before wiretapping an American citizen suspected of engaging in clandestine intelligence activities.

On the bench, Judge Bork has consistently tried to insulate the President's policies from legal challenge by legislators. In addition to the pocket veto case, Judge Bork contended in Crockett versus Reagan that 29 Members of Congress could not challenge the legality of the President's maneuvers in El Salvador.

In attempting to place Robert Bork on the Supreme Court, President Reagan is trying to pack the Court with a strong advocate of executive power who he can count on to say the President can do no wrong—or at least can't be sued for it.

JUDGE BORK AND THE SOCIAL COMPACT

Ours is a heterogeneous Nation. Our Constitution takes account of that fact. That social compact empowers the majority to enact and implement those policies essential to protect the general welfare, while guaranteeing to every individual and minority element freedom from unreasonable oppression by temporary or permanent majorities.

For black Americans and other minority groups, the enforcement of the social compact is a matter of survival. But the social compact is not self-executing. Legislatures, which are controlled by electoral majorities, can be generally trusted to watch over the perogatives of those majorities. However, protection of minority rights is uniquely the job of the judiciary.

And that is what gives us, especially, such great concern about Judge Bork. His writings, over a long career, both as an academic and as a judge, make clear that he does not accept the concept of a social compact in which the judicial branch is obliged to protect minorities from the tyranny of the majority. He is a strict majoritarian—at least where minority rights are concerned.

Judge Bork's view of the social compact is at direct odds with those of most of the Justices who have sat on the Supreme Court for at least the past 40 years. Over and over, starting with his now famous exegesis of "Neutral Principles" in the Indiana Law Journal, Judge Bork has insisted that the only individual rights protected against the majority are those explicitly and unmistakably mentioned in the Constitution and Bill of Rights. That, in itself, is a chilling idea for those of us whose ancestors were in slavery at the time of the adoption of the original compact and whose assimilation into the People of the United States under the Constitution required a bloody war and another 100 years of equivocation.

Judge Bork's ideological bent against minority rights is summed up in the phrase from Lord Chesterton he likes to quote deriding the notion that a community has every liberty except the liberty to make laws—his rallying cry in favor of majoritarianism in opposition to minority rights.

Equally disturbing is his willingness to permit false majorities to retain their underserved ruling status by the use of devices which restrict the right to vote. I refer to his public criticism of legislation forbidding certain voter literacy tests which had been used as a pretext for discrimination as well as his denunciation of the Supreme Court decision forbidding poll taxes, which Judge Bork called pernicious. Thus, even his commitment to so-called majoritarianism is suspect—and may be nothing more than a cover for an elitism whose real goal is to protect the dominant status of the wealthy and privileged.

Whatever his real motivation, what is indisputable is that Judge Bork has opposed just about every civil rights advance of the past 40 years.

In 1948, 6 years before Brown versus Board of Education, the Supreme Court decided the landmark case of *Shelley* v. *Kraemer* (334 U.S. 1). A precursor of Brown, the case outlawed judicial enforcement of racially restrictive deed covenants. Bork's Indian Law Journal article denounced the Shelly opinion, thus supporting the right of property owners to divide the country into racial ghettos enforced by the police power. In the 40 years since Shelly, housing integration has advanced at a snail's pace. If Bork had had his way, it would have stood absolutely still.

When Congress, inspired by Supreme Court decisions like Shelley and Brown, as well as the early civil rights movement, passed the Civil Rights Act of 1964 prohibiting discrimination in public accommodations, Bork called it unsurpassed ugliness. There is no record that he ever found racial segregation and discrimination itself so personally obnoxious or offensive.

And for the next 20 years, Mr. Bork took every opportunity to inveigh against proposals to expand rights of racial equality and justice in our land, including his opposition mentioned earlier, to the abolition of poll taxes and literacy tests which were used to deny the right to vote to the poor and members of minority groups:

As Solicitor General, Bork opposed fair housing remedies for low-income black citizens even though the Federal Government had participated in the discrimination. (*Hiss.* v. *Gautreaux*, 425 U.S. 284, 1976).

He found fault with the Supreme Court's decision in *Reitman* v. *Mulkey* (387 U.S. 369, 1967), upholding the California Supreme Court decision invalidating the State's proposition 14, a State ballot measure that overturned California's open housing law.

In 1972, Bork was one of only two law professors to testify in support of the constitutionality of proposed legislation to drastically curtail school desegregation remedies that the Supreme Court had held necessary to cure violations of the 14th amendment. And as Solicitor General, he continued to oppose school desegregation remedies before the Supreme Court.

Regarding affirmative action in medical school admissions, Bork sharply attacked the opinion of Justice Lewis Powell, the man he is nominated to succeed, in *University of California Regents* v. *Bakke* (438 U.S. 265, 1978) for suggesting that universities might take affirmative steps to train qualified blacks as doctors to meet the needs of the medically underrepresented black community. Justice Powell has cited that opinion as the one of which he is most proud.

Judge Bork has gone so far as to say that affirmative action offends "ideas of common justice." I have seen nowhere in his writings a suggestion that he feels racial discrimination "offends common justice."

Judge Bork's public career has spanned the period in which our society has made its greatest strides in extending the promise of equal justice to all its citizens and eliminating many of the vestiges of a polarized past. Millions of Americans played heroic roles in this historic forward movement toward an integrated society. Millions of others who were once skeptical of the civil rights movement have now come to terms with it and endorsed its objectives. During this entire period, Robert Bork has been an active and vocal heckler along every step of the route. And, from all that appears on the public record, remains so to this day.

Nomination of a man with so little regard for the rights of racial minorities to our highest court is an insult to millions of American citizens. This country has come too far in the past 20 years to tolerate on the Supreme Court a person with such views. At a time when we pride ourselves on the advances brought about by the civil rights movement, his confirmation would represent a major step backward into a bygone era when people of color had no rights which a white person was bound to respect.

JUDGE BORK AND OTHER INDIVIDUAL RIGHTS

It is not only people of color who must be concerned about Judge Bork's view of the rights of the individual. Whether it be rights of personal privacy, religious freedom, freedom of speech or electoral participation, Judge Bork has exhibited a disturbing hostility to claims of constitutional protection. He has condemned the notion of voting equality as set forth in the one-person-one-vote doctrine; he has challenged the long-settled view that the first amendment protects scientific and artistic, as well as political speech, and even narrowly defines the latter; he constrains the establishment clause to permit almost any sort of Government support of religion other than the establishment of an official church; and he considers it judicial usurpation for courts to forbid States from prohibiting birth control by married couples.

He clearly rejects the notion that the major purpose of the U.S. Consti-

tution is to keep Government off our backs, and is apparently ready to authorize the bureaucracy to entwine itself around our necks.

Judge Bork's views in opposition to individual and minority rights and in support of unrestrained executive power have now been well documented in reports issued by several public organizations dedicated to civil liberties and consumer and worker rights. In addition, there have been several especially revealing articles about Judge Bork which have appeared in print recently. In order to provide maximum illumination of Judge Bork's views and record and the threat he represents to us all, I am including in these remarks the following materials:

A report of the NAACP Legal Defense and Education Fund Inc. on "Judge Bork's Views Regarding Racial Discrimination;"

A report of the American Civil Liberties Union on the "Civil Liberties Record of Robert Bork;"

A report by the Public Citizen Litigation Group on "The Judicial Record of Robert H. Bork;"

A statement by the AFL-CIO Executive Council on "Opposition to the Nomination of Robert H. Bork;"

A press release from the Columbia Law Review entitled, "Bork's Voting Record Far More Conservative Than That of Average Reagan Judge, New Study Reveals;"

An article from the New York Review of Books by Ronald Dworkin on "The Bork Nomination."

JUDGE BORK AND STARE DECISIS

Equally worrisome as Judge Bork's constitutional views are his commitment to an activist political agenda for implementing them and his disdain for constitutional precedent.

The eminent legal philospher Ronald Dworkin concluded from a review of his writings that Judge Bork's decisions are guided mainly by "right wing dogma," that he has no coherent legal philosophy at all. This conclusion is borne out by the analysis prepared by the Public Citizen Litigation Group of nonunanimous Court of Appeals decisions in which Bork participated. That study found that the surest predictor of Judge Bork's decisions is the identity of the parties to a case. Invariably, he voted for Government and business litigants against individual claimants, and that when Government and business clashed, he sided with corporate interests.

Illustrative of Judge Bork's selective use of judicial restraint were two cases involving Federal regulatory activities. In one case, involving the Federal Communications Commission, Judge Bork gave short shrift to a black citizens' committee which wanted the agency to continue a policy of examining a licensee's past programming in connection with renewal applications to determine if it had acted in the past in accordance with the public interest. In the other case, Judge Bork upheld the objection of the Soft Drink Association to the Secretary of Agriculture's attempt to promulgate a rule restricting the sale of junk food in public schools until after the lunch period. In other words, Judge Bork was quite willing to permit the FCC to authorize the poisoning of children's minds, but wouldn't permit the Department of Agriculture to forbid poisoning of their bodies.

Judge Bork's alleged commitment to the principle of deference to the actions of administrative agencies also got misplaced when it came to the effort of the Federal Energy Regulatory Commission to control electric rates charged consumers in Louisiana, Arkansas, and Mississippi by Middle South Energy Inc. While Judge Ginsburg felt it was an appropriate occasion for deference to the decision of a regulatory agency, Judge Bork wrote the majority opinion reinstating the company's rate schedule.

Another example of his result mindedness was revealed recently when a retired Federal judge, James F. Gordon of Kentucky, wrote an unprecedented letter to the Senate Judiciary Committee complaining about Judge Bork's unethical attempt to manipulate the decision of a panel on which they both sat. According to Judge Gordon, Judge Bork attempted to write into an opinion his own view on congressional standing after the other two panel members had specifically disapproved it. That is one more indication of Judge Bork's obsession with implementing his own political agenda through decisionmaking.

As objectionable as that is for a circuit court judge, it is all the more cause for concern in a Supreme Court Justice, who is not bound by precedent and who is answerable to no higher authority. Indeed, Judge Bork has on many occasions publicly declared his belief that a member of the Supreme Court should not feel bound by prior constitutional interpretations with which he disagrees. Owen Fiss, the Alexander Bickel Professor of Public Law at Yale, has specifically commented on Bork's "willingness to denounce, repudiate, even deride decisions" that he does not agree with. And, Professor Fiss adds, elevating him to the Supreme Court "is not likely to instill within him a new reverence for authority, but rather give him the power to write his views into law."

What a Supreme Court with Judge Bork would be like may already have been foretold by recent events in the District of Columbia Court of Appeals, where Judge Bork tried to join together with the five other Republican members of that court in a partisan bloc to override any opinions written by one of the five Democratic appointees. That plan was derailed only because one of the Republicans had second thoughts.

It is thus not surprising that the Bork nomination has generated the largest grassroots movement in the Nation's history in opposition to a judicial appointment. The combination of his hostility to settled constitutional doctrine in regard to individual rights, his disdain for precedent and his overt political partisanship are a recipe for a constitutional disaster this Nation cannot afford. The answer is clear. The U.S. Senate should just say no to Bork.

Mr. Speaker, under leave to include extraneous matter, I submit the following material:

JUDGE BORK'S VIEWS REGARDING RACIAL DISCRIMINATION

(A Report of the NAACP Legal Defense and Educational Fund, Inc., August 1987)

(1) Criticism of Supreme Court Precedents.—

Judge Bork has contended that five major Supreme Court civil rights opinions were wrongly decided. *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966) and *Oregon* v. *Mitchell*, 400 US 112 (1970), upheld the constitutionality of the provisions of the federal Voting Rights Act which prohibit the states from requiring voters to be able to read and write in English. If these decisions were overturned, and the relevant portions of the Voting Rights Act were held invalid, state literacy tests would again become operative, barring non-literate adults from registering, and disenfranchising a large number of existing voters, a substantial proportion of them non-white. In New York State, where an English language literacy requirement is in the State Constitution, approximately 40% of the Puerto Rican population is literate in Spanish rather than English.

Judge Bork has disagreed with the decision in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), which held that state courts may not enforce racially restrictive covenants requiring that property not be sold or leased to nonwhites. In many instances housing discrimination is now forbidden by federal statute. In those cases to which federal open housing laws do not apply, however, a Supreme Court decision overturning *Shelley* would result in state court enforcement of restrictive covenants. The Supreme Court has construed *Shelley* to ban state courts from awarding damages for violations of contracts requiring racial or other forms of discrimination; if *Shelley* were overturned, such damage actions would become permissible.

Judge Bork has asserted that *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), which held the poll tax unconstitutional, was wrongly decided. Although the states which once utilized poll taxes have now repealed them, a number of jurisdictions restrict the franchise in certain elections to owners of real property, or impose extremely high filing fees for certain candidates. The Supreme Court, relying on *Harper*, has held that such practices unconstitutionally prevent less affluent citizens from voting or running for office.

Judge Bork has also objected to the decision in *Reitman* v. *Mulkie*, 387 U.S. 369 (1967), which held that a state cannot establish special constitutional obstacles to the enactment of civil rights statutes.

(2) Congressional Authority To Prohibit Practices with Discriminatory Effects

Judge Bork's criticism of *Katzenbach* v. *Morgan* and *Oregon* v. *Mitchell* was based on his contention that Congress, in enacting legislation under sections of the Fourteenth Amendment, cannot prohibit conduct that would not itself be unconstitutional under section 1 of the Amendment. In 1972 Judge Bork, in explaining his views regarding the constitutional restrictions on federal civil rights legislation, urged that Congress could not under the Fourteenth Amendment adopt a statute forbidding practices which had a discriminatory effect but which were not adopted for a discriminatory purpose. Bork's analysis was contained in a pamphlet regarding the so-called "Equal Educational Opportunities Act of 1972." [1] This legislation, proposed by President Nixon for the primary purpose of curtailing the use of busing to desegregate public schools, also contained in section 201 a prohibition against various forms of discrimination. Two parts of section 201 forbade practices with discriminatory effects, regardless of whether or not those practices were racially motivated.[2]

Judge Bork argued that these two portions of the proposed legislation, because they required no showing of official discriminatory intent, were unconstitutional:

"Two of the subsections of 201 . . . may be read to impose obligations far beyond any the Supreme Court has seen fit to define. Section 201(c) prohibits the assignment of a student to a school other than the one closest to his home if the result is to increase the degree of segregation by race, color, or national origin. Section 201(f) requires schools to take "appropriate action to overcome language barriers." Since these subsections do not explicitly refer to a forbidden segregatory *intent*, it would be possible to interpret them as imposing obligations upon schools that had never practiced de jure segregation. They could be seen, that is, as an attempt by Congress to legislate in the *de facto* area.

"This reading of 201 (c) and (f) would raise . . . grave issues of constitutional policy. . . . The Fourteenth Amendment . . . seems to be limited to an affirmative policy of denial by the state. . . .

"This difficulty with any interpretation that applies the strictures of the Fourteenth Amendment to *de facto* cases has led to attempts to say that Congress' power under the amendment is broader than that of the courts. Thus it is suggested, the Court may not reach *de facto* situations but the Congress may. . . . The solution seems improper, however, for it leaves the legislative power where it belongs only as between Congress and the Court, and shifts it impermissibly to Congress from the state legislatures. . . . The power to "enforce" the Fourteenth Amendment is the power to provide and regulate remedies, not the power to define the scope of the amendment's command or to expand its reach indefinitely.

"To read 201 (c) and (f) of the equal opportunities bill as dispensing with the need for a forbidden discriminatory *intent* by an agency of government, therefore, is to impute a casual attempt to alter drastically the relation between the federal and state government and to raise a profound issue of constitutionality in the wrong way."

R. Bork, "Constitutionality of the President's Busing Proposals," pp. 19-20 (1972) (Emphasis added).

If the Supreme Court were to accept Judge Bork's position regarding the limited nature of congressional authority under the Fourteenth Amendment, the validity of many federal statutes establishing a discriminatory effect standard would indeed be in doubt. The Equal Protection Clause itself ordinarily forbids only intentional racial discrimination. *Washington* v. *Davis*, 426 U.S. 229 (1976). Congress, however, has enacted a variety of statutes establishing a discriminatory effect rule, despite often strong opposition by the Reagan administration to the utilization of such a standard. Title VII of the 1964 Civil Rights Act, for example, prohibits most employment practices with a discriminatory effect; the application of Title VII to state and local governments has hitherto been based on the Fourteenth Amendment. *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 453-56 (1976). In 1982 Congress amended Section 2 of the Voting Rights Act to forbid the utilization of election laws and practices with a discriminatory effect, *Thornburg* v. *Gingles*, 92 L.Ed.2d 25 (1986); although this legislation found support in the Fifteenth Amendment as well as the Fourteenth, Judge Bork's constitutional objection seems equally applicable to both Amendments.

(3) Comments on the Poll-Tax.—

During his 1973 confirmation hearing, Judge Bork was questioned about his position that *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), striking down the Virginia poll tax, was wrongly decided:

Senator TUNNEY. How do you feel about the decision. Do you think that as far as the welfare of the Nation is concerned, the *Harper* case was correctly decided?

Mr. BORK. I do not really know about that, Senator. As I recall, it was a very small poll tax, it was not discriminatory and I doubt that it had much impact on the welfare of the Nation one way or the other.

Senator TUNNEY. How about the welfare of those people who had to pay it and might not have been able to afford it, for those people who perhaps would have been inhibited from registering and voting because of the poll tax?

Mr. BORK. Well, I would hope that a state would take some measure to enable those whose means do not permit them to pay a tax like that to pay it or to be relieved of it.

(1973) Confirmation Hearing, p. 17). In 1980 Judge Bork described *Harper* as having invalidated "even . . . racially non-discriminatory poll taxes." [3]

Judge Bork's benign characterization of the poll tax is difficult to reconcile with the facts that were common knowledge long before 1973. In its 1966 decision in *Harper* itself, the Supreme Court expressly found that the "Virginia poll tax was born of a desire to disenfranchise the Negro." 383 U.S. at 666 n.6. *Harper* cited a 1965 Supreme Court decision in *Harman* v. *Forssenius*, 380 U.S. 528 (1965), which had also concluded that the Virginia poll tax was racially motivated. The sponsor of the Virginia poll tax, in a passage quoted in *Harman*, exclaimed:

"Discrimination! Why, that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate."

380 U.S. at 543. At the 1902 Virginia state convention which enacted the poll tax, "the only real controversy was whether the provisions eventually adopted were sufficient to accomplish the disenfranchisement of the Negro." 380 U.S. at 543 n. 23.

The Supreme Court was not alone in recognizing that the poll tax in Virginia and across the south was adopted for the purpose of disenfranchising blacks. The Senate Judiciary Committee concluded in 1965, as it had in 1943, that the poll tax was racially motivated:

"We think a careful examination of the so-called poll tax . . . and an examination particularly of the constitutional conventions by which the amendments became a part of state laws, will convince any disinterested person that the object of the State constitutional conventions, from which emanated mainly the poll tax laws, were motivated entirely and exclusively by a desire to exclude the Negro from voting."

S. Rep. No. 162, 89th Congress, 1st Session, pt. 3, at 33 (1965). The United States Commission on Civil Rights reached the same conclusion:

"Between 1889 and 1908, the former Confederate states passed laws or amended their constitutions to erect new-barriers around the ballot box. The most popular were: (1) The poll tax . . . [T]heir sponsors made little or no attempt to disguise their chief objective, which was to disenfranchise Negroes in flat defiance of the Fifteenth Amendment."

United States Commission on Civil Rights, "With Liberty and Justice for All," p. 30 (1959).

The Senate's view of the poll tax, which existed only in southern states, was confirmed by repeated judicial findings. In the same year that the Supreme Court recognized in *Harper* the racial purpose of the Virginia poll tax, similar findings were made by lower federal courts regarding the poll taxes in Texas and Alabama. In *United States* v. *Texas*, 252 F. Supp. 234 (W.D. Tex. 1966), a three judge federal court held that "[a] primary purpose of the . . . Texas . . . poll tax . . . was the desire to disenfranchise the Negro." 252 F. Supp. at 245. The court noted a report of the Texas legislature that the poll tax was popular because of "a desire to disenfranchise the Negro," and quoted contemporaneous accounts of the racial purpose underlying the original adoption of the Texas poll tax. 252 F. Supp. at 242-43 n. 44. In *United States* v. *Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966) another three-judge court found:

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[1] R. Bork, "Constitutionality of the President's Busing Proposals" (American Enterprise Institute 1984).

[2] H.R. 13915, 92d Cong., 2d Sess. (1972), stated in pertinent part as follows: "Section 201. No state shall deny equal educational opportunity to an individual on account of his race, color, or national origin, by—

* * * * *

(c) The assignment by an educational agency of a student to a school other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

* * * * *

(f) The failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

[3] R. Bork, "Justice Douglas; His Politics Were His Law," Wall Street Journal, November 21, 1980.

"[F]rom its inception the Alabama poll tax was illegal and invalid as an attempt to subvert the Fifteenth Amendment to the United States constitution. The necessary effect of the poll tax as adopted in 1901 was to disenfranchise Negro voters. The history of the poll tax leaves no doubt that this was its sole purpose."

252 F. Supp. at 95. The words of the framers of the Alabama poll tax were as avowedly racial as those at the Virginia convention:

"[I]t is our purpose, it is our intention, and here is our registered vow to disenfranchise every Negro in the state." [4]

In Louisiana the President of the state convention commented regarding the new constitution embodying that state's poll tax:

"[D]oesn't it stop the Negro from voting, and isn't that what we came here for?" (applause) [5]

At the South Carolina convention that enacted that state's poll tax, one delegate decried black voting and insisted that the convention's purpose was "to put such safeguards around the ballot in the future to so restrict the suffrage and circumscribe it, that this infamy can never come about again." [6] The Mississippi Supreme Court expressly acknowledged that the state's poll tax was adopted to "obstruct the exercise of the franchise by the Negro race." *Ratliff* v. *Beale*, 74 Miss. 247, 266-67 (1896).

The United States Congress repeatedly recognized the serious harm and injustice caused by the poll tax. Between 1959 and 1962 the House of Representatives passed anti-poll tax bills on five occasions, and the Senate twice proposed constitutional amendments. *Harmon* v. *Forssenius*, 380 U.S. at 538-39. In 1962 the Congress adopted a constitutional amendment prohibiting the use of a poll tax in federal elections; the proposal was promptly ratified by the states and became the Twenty-Fourth Amendment. The poll tax remained in effect, however, for state elections. In 1965 Congress made a formal finding that continued "requirement of the payment of a poll tax as a precondition to voting . . . precludes persons of limited means for voting." 42 U.S.C. § 1973(h). In *United States* v. *Alabama* the court concluded that, because of its continued applicability to state and local elections, "the poll tax remains one of the last great pillars of racial discrimination. In effect, the tax still bars a large number of Negroes from the polls." 252 F. Supp. at 100.

Contemporaneous accounts of the impact in Virginia of the Twenty-Fourth Amendment, and of the on-going effect of the poll tax on non-federal elections, made clear the subsequent significance of *Harper* in that state and elsewhere. The New York Times reported in 1964 that the ratification of the Twenty-Fourth Amendment brought about a surge in black registration for federal elections, but that few of the new registrants paid the poll tax still required to vote in state elections:

"Norfolk, VA September 19th. Virginia's Negroes, freed from paying a poll tax in Federal elections by a constitutional amendment, are registering in record numbers in several Virginia communities . . . .

"In the Tidewater region around Norfolk and in Richmond, Negroes have been quick to seize advantage of the poll tax demise . . . . [I]n Richmond . . . . Negro registrations totalled 1,279, and white registrations 519 . . . . In Norfolk, 5,325 people, at least half of them Negroes, registered . . . . the city's population is 26 percent Negro . . . . Negro registration in Portsmouth from July 16 through September 16 totalled 2,027, roughly one-third as many as the 6,235 Negroes previously registered in that city . . . . In 1960, from July 16 to September 16, only 224 Negroes registered in Portsmouth . . . .

"The quickened Negro interest in national politics bears little immediate chance of Negro influence in state elections. Registrars in Portsmouth and Norfolk estimate that *10 percent or less of the new Negro voters are also paying the $1.50-a-year poll tax still demanded as a state and local voting requirement.*"

New York Times, September 20, 1964, p. 66 col. 3. (Emphasis added.)

The next spring the Times reported in a front page story that an end to the poll tax still applicable to state and local elections would have a major effect on state politics:

"Byrd's Power in Virginia Periled by Proposed Ban on Poll Tax

"Richmond, May 28th. It is generally acknowledged here that repealing the poll tax for state and local elections would probably speed the demise, or transformation, of the Byrd political organization in Virginia. . . . The removal of all taxes on voting, it is believed, would accelerate the change from a small, controlled electorate to a much broader one in which the urban centers held power that had been centered in the county courthouses. . . .

"In last year's Presidential election, after ratification of the Twenty-Fourth Amendment, more than one million Virginians voted, an increase of 270,000 from the 1960 election . . . Ralph Eisenberg, writing in last month's edition of The University of Virginia Newsletter, said an analyses of the election showed that 'removal of the poll tax as a requirement for voting in Federal elections was the principal factor responsible for the impressive turnout.'

"One observer here said a similar effect could be expected in state and local elections if the poll tax were entirely removed. 'It could blast some of the old-line conservatives out of their seats in the General Assembly and shake up the Governor's office quite a bit. . . .

"[I]n Virginia . . . Texas . . . Mississippi and Alabama . . . there is evidence that the tax keeps down political participation by the poor, Negroes included. . . .

"[W]hen the tax was repealed in Louisiana, Florida, Tennessee, Georgia and Arkansas the voter turnout increased 5 to 10 percent . . . a number greater than the margin of victory in many election contests. . . .

"The Virginia poll tax was adopted by constitutional convention in 1902. In the next Presidential election, participation fell drastically, from 264,000 in 1900 to 130,000 in 1904."

New York Times, May 31, 1965, p.1, col. 1.

(4) Opposition To Title II of the 1964 Civil Rights Act—

In 1963, Judge Bork wrote an article opposing adoption of Title II of the 1964 Civil Rights Act, which prohibits racial discrimination in public accommodations. R. Bork, "Civil Rights—A Challenge," *The New Republic*, August 31, 1963, pp. 21-24.[7] Judge Bork offered three distinct reasons for rejecting the proposed legislation.

First, Bork argued that Title II would be difficult or impossible to enforce

"[I]t is . . . appropriate to question the practicality of enforcing a law which runs contrary to the customs, indeed the moral beliefs, of a large portion of the country. Of what value is a law which compels service to Negroes without closes surveillance to make sure the service is on the same terms given to whites? It is not difficult to imagine ways in which barbers, landlords, lunch counter operators, and the like can nominally comply with the law but effectively discourage Negro patrons. Must federal law enforcement agencies become in effect public utility commissions charged with the supervision of the nation's business establishments or will the law become an unenforceable symbol of hypocritical rightenousness?" (Id. at 23).

Second, Bork contended that Title II was objectionable because the rationale of the bill would, if accepted, lead to other anti-discrimination measures:

"If it is permissible to tell a barber or a rooming house owner that he must deal with all who come to him regardless of race or religion, then it is impossible to see why a doctor, lawyer, accountant, or any other professional or business man should have the right to discriminate. Indeed, it would be unfair discrimination to leave anybody engaged in any commercial activity with that right. Nor does it seem fair or rational, given the basic premise, to confine the principle to equal treatment of Negroes as customers. Why should the law not require not merely fair hiring of Negroes in subordinate positions but the choice of partners or associates in a variety of business and professional endeavors without regard to race or creed . . . It is difficult to see an end to the principle of enforcing fair treatment by private individuals." (Id. at 22).

The 1964 Civil Rights Act had many of the consequences which Judge Bork feared: Title VII was construed to apply to discrimination in the selection of partners, *Hishon* v. *King and Spalding*, 467 U.S. 69 (1984), Title VIII forbade many forms of discrimination in real estate transactions, and Congress enacted a variety of measures dealing with discrimination in the selection of subcontractors. See *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980).

Third, Bork attacked Title II because he believed that it infringed on the freedom of whites to discriminate:

"Few proponents of legislation such as the Interstate Public Accommodations Act seem willing to discuss the cost in freedom which must accompany it . . . There seems to be a strong disposition on the part of the proponents of the legislation simply to ignore the fact that it means a loss in a vital area of personal liberty. That it does so is apparent. The legislature would inform a substantial body of the citizenry that in order to continue to carry on the trades in which they are established they must deal with and serve persons with whom they do not wish to associate . . . Of the ugliness of racial discrimination there need be no argument . . . But . . . [t]he principle of such legislation is that if I find your behavior ugly by my standards, moral or aesthetic, and if you prove stubborn about adopting my view of the situation, I am justified in having the state coerce you into more righteous paths. That is itself a principle of unsurpassed ugliness."

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[4] See *United States* v. *Alabama* 252 F. Sup. at 98.
[5] See *United States* v. *Texas*, 252 F. Supp. at 243 n. 52.
[6] Id. at 243 n. 51.
[7] The article was reprinted in the Yale Law Report (Winter, 1963). Judge Bork also wrote a letter defending the article. "Civil Rights—A Rejoinder," *The New Republic*, Sept. 21, 1963, p. 36.

(Id. at 22). Judge Bork perceived no basis in the Constitution or history of the United States for treating the freedom of whites to discriminate as any less legitimate than the interest of blacks in equal treatment and opportunity.

Judge Bork also denounced in harsh terms civil rights leaders who were sitting in at whites-only lunch counters asking to be served.

"[I]t is possible to be somewhat less than enthusiastic about the part played by "moral leaders" in participating in demonstrations against private persons who discriminate in choice of their patrons. It feeds the danger of the violence which they are the first to deplore. That might nevertheless be tolerable if they were demonstrating against a law that coerced discimination. They are actually part of a mob coercing and disturbing other private individuals in the exercise of their freedom. Their moral position is about the same as Carrie Nation's when she and her followers invaded saloons." (Id. at 23)

Carrie Nation and her followers, it will be recalled, ordinarily entered saloons wielding hatchets and axes, and wrecked the interior of the saloons and their contents. There was, so far as we have been able to ascertain, no incidents in which sit-in demonstrations engaged in either violence or the destruction of private property. The invariable practice of these demonstrations was simply to sit in a whites-only section of a restaurant and politely ask to be served. See, e.g., *Gardner-Louisiana*, 368 U.S. 157, 160 (1961). (Demonstrators sat in whites-only section "and remained quietly in their seats. . . . The arresting officer testified that the petitioners did and said nothing except that one of them stated that she would like a glass of iced tea . . ."); *Bouie* v. *Columbia*, 378 U.S. 347, 348 (1964) (two demonstrators, after entering a whites-only restaurant, "contined to sit quietly in the booth" after being asked to leave). Although violence occurred during this period of the civil rights movement, it was invariably the work of white individuals, mobs or policemen attacking peaceful black and white civil rights demonstrators. The incident most analogous to the practices of Carrie Nation occurred in Atlanta, when a white restaurant owner named Lester Mattox armed himself with a pick handle and chased blacks from his restaurant. As a result of that attack Mr. Maddox became a celebrity, among Southern whites and went on to be elected Governor of Georgia.

In a 1964 article in the Chicago Tribune, Bork reiterated his objection that Title II would interfere with the rights of whites who preferred not to associate with blacks:

"The accommodations law . . . would inform all owners of specified businesses that in order to continue in their established trades they must deal with and serve persons with whom they do not wish to associate. It would similarly, inform all customers of such businesses that they must sacrifice what seems to some of them an important aspect of their personal liberty in order to enjoy the services and goods of any such commercial establishment."

R. Bork, "Against the Bill," Chicago Tribune, March 1, 1964, p. 1 col. 1. Title II, he feared, would lead to other restrictions on freedom of association:

"[T]his law would set a particularly dangerous precedent because of the logical and political impossibility of confining its principle of coercing private associations to the particular areas it covers. If the owners and patrons of the commercial establishments reached by bill [roughly: restaurants, hotels and motels, gas stations, and theatres] are to be denied freedom of association in the name of a larger morality, how can that freedom be left to any seller of goods or services? There is, in fact, no reason to confine the principle of enforced association to commercial relationships."

Judge Bork challenged the constitutional authority of Congress to adopt the Public Accommodations Act:

"Many constitutional problems are raised by the civil rights bill but among the most serious are those raised by the public accommodations section. The House bill rests that section both upon Congress' constitutional power to regulate interstate commerce and upon the 14th amendment. The law would reach about as far as possible under the interstate commerce power. It provides, for instance, that no lunch counter owner can discriminate if a 'substantial portion' of the food he serves has moved in interstate commerce. The results are plain for the concept of federalism, the historic idea that there are important powers wholly reserved to the states and beyond the reach of the national government. If Congress can dictate the selection of customers in a remote Georgia diner because the canned soup once crossed a state line, federalism—so far as it limits national power to control behavior through purported economic regulation—is dead." (Id.)

Judge Bork who also argued that Title II, like Title VII, would prove unenforceable.

In 1973, at the Senate hearing regarding his nomination to serve as Solicitor General, Judge Bork, in response to a question from the committee, stated that he supported Title II. The full text of his statements is as follows:

"I should say that I no longer agree with that article and I have some other articles that I no longer agree with. That happens to be one of them. The reason I do not agree with that article, it seems to me I was on the wrong track altogether. It was my first attempt to write in that field. It seems to me the statute has worked very well and I do not see any problem with the statute, and were that to be proposed today I would support it." (1973 Confirmation Hearing, pp. 14-15)

(5) Opposition to Title VII of the 1964 Civil Rights Act.—

In his 1964 Chicago Tribune article Judge Bork also argued rejection of Title VII of the 1964 Civil Rights Act. He urged that Title VII, like Title II, would properly force whites to associate with blacks:

"[T]here are serious and substantial difficulties connected with the public accommodations and employment provisions. Such laws would:

"1. Adopt a principle of enforcing associations between private individuals which would, if uniformly applied, destroy personal freedom over broad areas of life.

* * * * *

"It is not enough to be assured that some people use their freedom badly and that others are thereby affronted or even made to suffer. The same could be said of many other freedoms that we continue to retain.

"Moreover, the intrusion upon freedom represented by a public accommodations and employment practices law would be of an extraordinary nature—for it is extraordinary that government should regulate the associations of private persons."

R. Bork, "Against the Bill", Chicago Tribune, March 1, 1964, p.1. col. 1. The enactment of Title VII, Judge Bork argued, would set a dangerous precedent:

"Recent headlines make it completely clear that the demand for government enforced association does not stop at the boundaries of the commercial world but is being pressed aggressively in other areas of life. The accommodations and employment provisions of the civil rights bill cannot be viewed in isolation but must be assessed as only a modest first step in a broad program of coerced social change.

"If, therefore, the principle of enforced association which underlies this bill were uniformly applied [and, of course, if it is a good principle, it ought to be uniformly applied], we would have a greatly different society from the one we now enjoy. The new one might possibly be more just and moral, but it would quite certainly be far less free." (Id.)

The social costs of enforcing Title VII, he insisted, would be intolerable:

"The difficulty of enforcing the public accommodations and fair employment sections of the proposed law would result from three factors: (1) The sheer number of establishments covered; (2) the difficulty of judging whether the standards imposed by the law had been evaded, and (3) the fact that the law would run directly contrary to the customs and moral beliefs of a majority of the population in a large part of the country . . .

"It must be enforced not only when a Negro is refused employment but when he is discriminated against in more subtle ways on the job.

"Enforcement is made even more impossible because the law attempts to deal with discriminations by reason of religion and national origin as well as race and color. The fair employment section even outlaws discrimination by reason of sex. [The House bill does avoid any appearance of stuffy fairness for absolutely everybody by thoughtfully providing that while you may not refuse to hire a man because of his religion, you may do so if he is an atheist.]

"This attempt to enforce fair treatment for almost every conceivably disadvantaged group would completely overload the enforcement machinery." (Id.)

It would be better, he urged, not to try to prohibit employment discrimination, because if whites succeeded in violating the law it would undermine black confidence in peaceful change:

"Many persons . . . favor the law as a moral symbol and as a weapon for use along with other tactics. The difficulty with this somewhat sophisticated viewpoint is that most supporters as well as opponents of this legislation think they are struggling over a law that is meant to be enforced.

"If it is not, the result on both sides may be disrespect for law and loss of faith in peaceful solutions to this problem. It could be that the most dangerous alternative before us is to enact a law that cannot be enforced." (Id.).

Enacting legal protections for racial and religious minorities, Bork insisted, would necessarily increase rather than reduce hostility among different racial and religious groups:

"The effect of public accommodations and employment practices legislation upon racial and religious tensions may be quite the opposite of what its advocates intend.

"Not only will the law pit persons of different races and religions against each other in litigation [not a notably soothing process], but it will proclaim that law, and hence

politics, may properly be explicitly racial and religious.

"Political strugle will increasingly take place between groups bearing racial and religious identifications. Alliances will be sought and enmities formed on such lines.

"The process has begun already, and its implications for the future of our society are nothing short of appalling. The only hope of avoiding it is to deny that law may ever properly confer rights or impose duties upon private individuals on the ground that they are, or are dealing with, whites or Negroes, Protestants, Catholics, or Jews." (Id.)

In a 1971 article Judge Bork again expressed reservations about the feasibility and social costs of enforcing Title VII of the 1964 Civil Rights Act:

"Certain forms of discrimination present the problem of criteria that are real but cannot easily be established by evidence. It is easy enough to establish whether a person has been turned away from a restaurant because of race or sex—the variables are few. But employment discrimination presents a different problem. The decision concerning who is to be hired or not hired, who is to be promoted or passed over, does not always, or perhaps even usually, turn upon objective and quantifiable data. Such decisions also rest upon elements of judgment and intuition. On a case-by-case basis, therefore, the employer's decision will usually turn out to be unreviewable. Unless he admits bias, it is almost impossible to prove that he discriminated. This, it appears, is the reason federal programs in this field, including the President's "Philadelphia Plan" for the building trades, have had to impose quotas in order to be effective . . . .

"We are beginning to see that these are areas in which a government of men rather than laws is to be preferred. Sometimes, as in the case of employment discrimination, we may be willing to pay the costs that the use of law entails, but then we should be skillful enough to frame the criteria in ways that law can handle. We must remember that law is a blunt instrument, and that we cannot use it effectively if we assign it tasks requiring a scalpel."

R. Bork, "We Suddenly Feel That Law is Vulnerable", Fortune, December, 1971, pp. 137-38. The substance of this somewhat delicately phrased comment appears to be that eradicating employment discrimination "may" be important enough to warrant the costs inherent in the use of law, but that detecting whether employment decisions were made on the basis of forbidden criteria, such as race or sex, is so different that Title VII can only be implemented in harsh, perhaps unacceptable, ways.

(6) Support of the Nixon Anti-Busing Bills.—

In 1971 the Supreme Court unanimously held that federal courts could direct the use of busing where necessary to desegregate a de jure segregated school system. *Swann* v. *Charlotte-Mackelenburg Board of Education*, 402 U.S. 1 (1971). The next year President Nixon proposed two bills intended to limit the effect of *Swann*. The first, the "Student Transportation Moratorium Bill," would have forbidden any federal court or agency to issue any busing order whatever until July 1, 1973, or until the enactment of congressional standards, whichever occurred sooner. The second measure, the so-called "Equal Educational Opportunities Act of 1972", would have forbidden busing under certain specified circumstances, regardless of whether it might be constitutionally required, and would have established fixed time limits on the period during which desegregation orders, including those involving no busing whatever, could remain in effect. Congress rejected this legislation.

Judge Bork testified that the two bills as originally introduced were constitutional; other constitutional law experts were overwhelmingly of the view that the proposals were unconstitutional. Hearings on the Equal Educational Opportunity Act of 1972, 92nd Cong., 2d sess., pp. 1312-20 (1972); R. Bork, "Constitutionality of the President's Busing Proposals" (American Enterprise Institute, 1972).

(7) Comments On Affirmative Action.—

Judge Bork has written two articles regarding affirmative action. The first, published shortly before the Supreme Court decision in *University of California Regents* v. *Bakke*, 438 U.S. 265 (1978), expressed the hope the Supreme Court would hold that the affirmative action plan at issue was forbidden by Title VI of the 1964 Civil Rights Act. Judge Bork did not contend that the original intent of the framers of the 1964 Act was to forbid affirmative action. He argued, rather, that a victory for Bakke under Title VI was desirable because it would force Congress to adopt specific legislation dealing expressly with affirmative action:

"[I]f Title VI is held to authorize private suits, a decision for Bakke on the statutory ground of the Civil Rights Act would reengage the political process in a more focused and self-conscious way in the definition of equality. That ought to happen before the Supreme Court makes the ultimate determination."

R. Bork, "Bakke Should Be Decided by the Political Process", Wall Street Journal, October 22, 1977. Bork expressed concern that it would be undesirable for the Supreme Court, if it reached the constitutional issue, either to permit all forms of affirmative action, or to adopt a sweeping prohibition:

"To enshrine government preference for particular races in constitutional law might damage the Court, transform perceptions of what American society is about and intensify explicit racial and ethnic demands for scarce resources. Declaring racial preferences illegal, however, may cut heavily into minority attendance. . . ." (*Id.*)

The Supreme Court decided *Bakke* on constitutional grounds, and concluded, as a result of the opinion of Justice Powell, that affirmative action was permissible in some but not all instances. Judge Bork expressed satisfaction that "the courageous and badly treated Bakke goes to medical school next fall", and that "the hard-core racists of reverse discrimination are defeated." R. Bork, "The Unpersuasive Bakke Decision", Wall Street Journal, July 21, 1978. Judge Bork, however, criticized Justice Powell's intermediate position:

"As politics, the solution may seem statesmanlike, but as constitutional argument, it leaves you hungry an hour later. The trouble is, it is hard to take seriously. . . . Justice Powell's . . . vision of the Constitution remains unexplained. Justified neither by the theory that the [Fourteenth] amendment is pro-black nor that it is color blind, it must be seen as an uneasy compromise resting upon no constitutional footing of its own." (*Id.*)

This argument was not inconsistent with Judge Bork's earlier suggestion that the case be resolved under Title VI. In both articles Judge Bork made clear that in his view the Supreme Court, in deciding whether or not to address the major constitutional issue involved, should take whichever approach would stimulate consideration in the political process of the policy issues at stake. Several years later Judge Bork, as a member of the Court of Appeals, urged that court base its approach to a controversial case on the same premise. *Planned Parenthood Federation* v. *Heckler*, 712 F.2d 650, 665, 668 (D.C. Cir. 1983).

In his post-*Bakke* article Judge Bork also expresses some of his own views on the constitutional issues raised by affirmative action. Judge Bork denounced position taken by Justices White, Blackmun, Brennan and Marshall that affirmative action might be permissible because of past societal discrimination. Those four Justices had argued that the effects of such societal discrimination had given Bakke an unfair advantage, and that in the absence of that past racial discrimination minority applicants would have outranked Bakke himself even without resort to an affirmative action plan. Bork responded:

"Even granting the speculative premise, we cannot know which individuals under a hypothetical national history would have beaten out Bakke. Justice Brennan appears to mean, therefore, that the particular individuals admitted in preference to Bakke on grounds of race are proxies for unknown others. Bakke is sacrificed to person A because Davis [Medical School] guesses that person B, who is unknown but of the same minority race as A, would have tested better than Bakke if B had not suffered pervasive societal discrimination. A is advanced to compensate for B's assumed deprivation, and Bakke pays the price. The argument offends both ideas of common justice and the 14th Amendment's guarantee of equal protection to persons, not classes." (Id.)

Even though Bakke might have been the white beneficiary of past racial discrimination, Judge Bork urged, Bakke had a constitutional right to keep that benefit unless it was possible to identify the specific black who, but for past discrimination, would have been admitted to medical school. This contention appears to be the precursor of the position subsequently advocated by Assistant Attorney General William Bradford Reynolds that affirmative action is unconstitutional because it is not "victim-specific."

On July 2, 1987, a New York Times story regarding Judge Bork included the following statement:

"Judge Bork has said little if anything *publicly* about current civil rights issues, in particular job preferences for women and minorities.

"Administration officials privately express confidence, however, that he would share its view that racial preferences benefiting women and minorities who cannot personally prove themselves victims of discrimination at the expense of white men are illegal." (Emphasis added). The Times story did not identify the Administration officials who had expressed that view.

(8) Judge Bork's Record As Solicitor General.—

When Judge Bork was confirmed in 1973 as Solicitor General, he indicated to the Senate Judiciary Committee that as Solicitor General he would defer to the policies of the Administration, rather than attempting to present to the Supreme Court his own views.

Judge Bork generally adhered to that approach. When the government was a party to a civil rights case that reached the Su-

preme Court, the Solicitor General's office advocated there the same position which the government had taken in the lower courts, both in cases in which the government's position was pro-civil rights and in cases in which it was not.

REPORT ON THE CIVIL LIBERTIES RECORD OF JUDGE ROBERT H. BORK

(Prepared by the American Civil Liberties Union)

Pursuant to ACLU policy, established by the Board of Directors of the American Civil Liberties Union, this report examines the record of Robert H. Bork, Judge on the U.S. Court of Appeals for the District of Columbia Circuit, who has been nominated for the position of Associate Justice of the United States Supreme Court. The memorandum review Judge Bork's authored opinions while on the bench[1] his unpublished speeches (many given in the past five years), as well as his academic writings, congressional testimony, popular articles, speeches, and interviews.[2] Where Judge Bork has disclaimed a position previously taken, that is noted; otherwise, it is assumed that Judge Bork still adheres to these published views.

I. INTRODUCTION

Robert Bork's extreme judicial philosophy is reflected in a series of speeches, articles, testimony and court decisions. If his philosophy prevails, it would radically reduce the role of the Supreme Court and seriously diminish the force of the Bill of Rights and the liberties it protects.

Judge Bork's view of the Constitution is that it creates a governmental structure designed, with few exceptions, to promote the majority will at the expense of individual rights.[3] This view is summarized by a quote from Chesterton, which he repeatedly cites:

"What is the good of telling a community that it has every liberty except the liberty to make laws? The liberty to make law is what constitutes a free people".[4]

In Judge Bork's opinion, the Constitution must be interpreted almost exclusively in light of its majoritarian purpose. This means that the only individual rights protected against the majority are those explicitly and unmistakably mentioned in the Constitution and the Bill of Rights. As a result, Judge Bork assigns a sharply limited role to the Supreme Court. Any doubt as to the constitutionality of a statute should be resolved by permitting the legislature to have its way. The Court may strike down a statute only if there is no doubt that a provision of the Constitution is clearly violated. Moreover, legal concepts, such as standing and justiciability, should be defined to reduce substantially the number of cases that the Court may accept for review.

Judge Bork sees the primary role of the Constitution as insuring that the majority is able to impose its moral judgments on the rest of society. His conception of the Court's role is radically different from most, if not all, of the Justices who have sat on the Court in the past forty years. In fact, Judge Bork has specifically rejected a long list of landmark constitutional rulings by the Supreme Court.[5] These rulings, which he has described as "pernicious,"[6] "unprincipled,"[7] and "utterly specious,"[8] include the following:

A decision striking down a statute making it a crime for married couples to use contraceptives; [9]

A decision barring judicial enforcement of racially restrictive covenants; [10]

A decision protecting illegitimate children against arbitrary discrimination; [11]

A decision protecting the right to use obscene language for political purposes; [12]

Decisions giving First Amendment protection to speech advocating violence for political reasons as long as there is no clear and present danger; [13]

Decisions striking down state abortion laws; [14]

A decision holding unconstitutional a law requiring the sterilization of habitual criminals; [15]

Decisions striking down state poll taxes and literacy tests; [16]

Decisions upholding affirmative action plans in various circumstances; [17] and,

Decisions striking down state laws permitting prayer in the schools or permitting use of government funds for public employees to teach in parochial schools.[18]

Indeed, Judge Bork questions whether the Framers intended the Court to assume the power to review the constitutionality of statutes.[19] He is sure, however, that the power of judicial review should generally be exercised to facilitate the ability of the majority to impose its moral views on the minority.[20]

As Judge Bork interprets the Constitution, few rights are shielded from the majority's judgments. If confirmed, and if his views prevail, civil liberties in this country would be radically altered and the structure of government radically changed. The majority in each state could impose its moral values on the private lives and decisions of all citizens. Individual liberty would have a radically different meaning in each state.

II. JUDICIAL APPOINTMENTS: THE ROLE OF IDEOLOGY

Throughout most of our history, the Senate has engaged in a "practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him." [21] Indeed, the Framers rejected giving the Senate only a limited veto over the President's nomination, voting down a proposal that the President appoint unless "disagreed to by the Senate." [22] Both the text of the Constitution, as well as the history of the Appointments Clause, demonstrates that the Senate has and should exercise a shared role with the President in the confirmation process.

A. History of the Appointments Clause

The Appointments Clause expressly provides for consensus by the two elected branches of government in the confirmation process. Article II, section two of the Constitution states that "the President . . . shall nominate, and by and with the [a]dvice and [c]onsent of the Senate shall appoint . . . Judges of the Supreme Court. . . ."

The history of the clause clearly indicates that its language was a compromise between those who wanted appointment by the President alone and those who favored appointment by the Congress or Senate without a presidential role. The original Virginia Plan, introduced at the convention on May 29, 1787, provided that all judges would be appointed by the national legislature.[23] By June 13, the convention had decided that appointment by the whole legislature was unwieldy, and had therefore adopted Madison's proposal that the appointment power be lodged in the Senate alone.[24]

Two attempts to switch the appointment power to the President were defeated. On July 18, 1787, the convention voted down a proposal that the President appoint without congressional approval, and on July 21, the convention rejected a motion that the President appoint unless "disagreed to by the Senate." [25] Only near the end of the convention, on September 7, did the Framers agree to give the president any role in the selection of judges. The president's power to nominate, however, was carefully balanced by the requirement that the Senate advise and consent on every appointment.[26]

Eight years later, in 1795, the Senate rejected Washington's nomination of South Carolina's John Rutledge to the Supreme Court. John Rutledge had been one of George Washington's original appointments to the Court, as well as one of the principal authors of the first draft of the Constitution. He had resigned from the Court to become Chief Justice of South Carolina. The Senate rejected his second nomination in 1795 by a vote of 14 to 10 because Rutledge had attacked the recently ratified Jay Treaty and was regarded as a weak Federalist.[27] For those who find the "original intent" of the Framers persuasive, it is significant that three of the rejecting Senators had signed the Constitution.[28]

B. How The Senate Has Exercised Its Role

Over 200 years, the Senate has rejected almost 20 per cent of the president's Supreme Court nominees.[29] Beginning with John Rutledge in 1795, the Senate has considered and rejected nominees because of their views on a range of issues, including federal supremacy, civil service, slavery, immigrants, unions, business, and civil rights. Sometimes the Senate has rejected a candidate outright; other times, the Senate has declined to take action or a candidate has withdrawn.[30]

In this century, the Senate rejected President Hoover's 1930 nomination of Chief Justice John Parker of North Carolina, by a vote of 41–39, largely due to Parker's racist campaign speeches and anti-union attitudes. The senate also rejected President Nixon's nomination of Clement Haynsworth and Harold Carswell. Carswell's rejection was based in part on 1948 campaign speeches supporting white supremacy.

C. The Senate's Appropriate Role

As Professor Charles Black has written:

"The Supreme Court is a body of great power. Once on the Court, a Justice wields that power without democratic check. This is as it should be. But is it not wise, before that power is put in his hands for life, that a nominee be screened by the democracy in the fullest manner possible, rather than in the narrowest manner possible, under the Constitution?" [31]

Those who believe it improper for Senators to reject nominees for ideological reasons would seldom restrict the President in the same fashion. Yet there is nothing in the text of the Appointments Clause or in its application during the past 200 years to suggest that the Senate should be more limited or less diligent than the president in the range of factors it may or should consider. "He who *advises* gives or withholds his advice on the basis of *all* the relevant considerations bearing on [the] decision." [32]

While the President has broad discretion in most Executive appointments,[33] the Senate's role in appointing Justices to the Supreme Court may more aptly be compared to its co-equal partnership in making treaties, or to the President's role in vetoing legislation. In each case, the structure and text of the Constitution make plain that the gov-

Footnotes at end of report.

ernmental function is so important as to demand the concurrence of two branches.

Thus, constitutionally, the Senate has a shared role in the appointments process that obliges it to consider a broad range of factors, including a nominee's judicial philosophy.

III. CIVIL LIBERTIES RECORD

Judge Bork has been on the bench since 1982. During that time, he has written opinions involving key civil liberties issues: free speech, government secrecy, sexual discrimination, gay rights. He has not written opinions in many other areas such as church-state relations, race discrimination and its remedies, voting rights or reproductive freedom. However, his extra-judicial writings and speeches, including a series of unpublished speeches delivered mostly in the past five years, provide a clear expression of his views on these and other subjects.

A. Equal Protection and Voting Rights

Judge Bork's narrow view of the Equal Protection Clause is that it prohibits limited forms of discrimination against racial, ethnic or religious minorities, and very little else.[34] According to Judge Bork, "[t]he equal protection clause . . . can require formal procedural equality, and, because of its historical origins, it does require that government not discriminate along racial lines. But much more than that cannot properly be read into the clause." [35]

He does not believe that the Fourteenth Amendment bars judicial enforcement of racially restrictive covenants.[36] He does not believe that it limits state constitutions from precluding fair housing enforcement.[37] He does not believe that it was intended to provide heightened protection for illegitimate children.[38] He does not believe it entitles Congress to remedy *de facto* discrimination, even against racial minorities.[39]

The Supreme Court's longstanding view of the Fourteenth Amendment is far more expansive. Thus, the Court has repeatedly struck down discriminatory laws supported by nothing more than "a bare . . . desire to harm a politically unpopular group. . . ." [40] It has recognized the propriety of carefully crafted affirmative action plans.[41] And it has rejected the contention that the Equal Protection Clause can or should be limited to race.[42] These Supreme Court holdings are not, as Judge Bork would have it, far-out interpretations of the Court without basis in law. They are the result of the Court's attempt over decades to fulfill its role as the interpreter of broadly stated constitutional provisions. Judge Bork would eviscerate that role, and leave individual liberty primarily in the hands of majorities in state and local legislatures.

Moreover, Judge Bork sees little risk in reducing the Court's role in promoting equality:

"The premise that the poor or the black are underrepresented politically is quite dubious. In the past two decades we have witnessed an explosion of welfare legislation, massive income redistributions, and civil rights laws of all kinds. The poor and the minorities have had access to the political process and have done well through it." [43]

Judge Bork also minimizes the role of Congress in promoting equality, preferring instead to defer to local majorities, which historically have been the major source of racially discriminatory laws and customs. Thus, in 1972, Judge Bork testified that federal legislation dealing with remedies for *de facto* segregation, "would raise . . . grave issues of constitutional policy. . . ." [44] He stated:

"Th[e] difficulty with any interpretation that applies the strictures of the Fourteenth Amendment to *de facto* cases has led to attempts to say that Congress' power under the amendment is broader than that of the courts. Thus, it is suggested, the Court may not reach *de facto* situations but the Congress may. That solution leaves the legislative power where it belongs, in the Congress. . . . The solution seems improper, however, for it leaves the legislative power where it belongs only as between Congress and the Court, and shifts it impermissibly to Congress from the state legislatures. There is no warrant in the language or history of Section 5 to suppose that it is a national police power superior to that of the states. The power to "enforce" the Fourteenth Amendment is the power to provide and regulate remedies, not the power to define the scope of the amendment's command or to expand its reach indefinitely." [45]

This view, which Judge Bork has not repudiated in any material, available publicly, would resurrect the discredited doctrine of states' rights with respect to racial discrimination.

Judge Bork even criticizes a series of Supreme Court decisions upholding the power of Congress to remedy *de jure* discrimination. For example, Judge Bork rejects Supreme Court doctrine that relies on the Fourteenth Amendment to ensure equality of the franchise, criticizing the one-person, one-vote cases as lacking any "constitutional . . . excuse.[46] According to Judge Bork:

"The principle . . . runs counter to the text of the Fourteenth Amendment, the history surrounding its adoption and ratification and the political practice of Americans from colonial times up to the day the Court invented the new formula [of one-person, one-vote]." [47]

Based on his extremely restrictive view of the scope of the Fourteenth Amendment and the role of the Supreme Court in enforcing it, Judge Bork also disagrees with the Supreme Court's decision in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), invalidating Virginia's use of a poll tax in state elections.[48] He disagrees with the Supreme Court's decision in *Katzenbach v. Morgan*, 384 U.S. 641 (1966), upholding a congressional ban on English literacy tests for voters who had completed the sixth grade in a Puerto Rican school.[49] In short, Judge Bork repudiates key Supreme Court precedent in the voting rights area under the Fourteenth Amendment.

Consistent with his narrow views on the Fourteenth Amendment, Judge Bork has also been a critic of the Supreme Court's affirmative action decisions, describing the *Bakke* opinion [50] (in which Justice Powell cast the critical fifth vote) in the following terms: "As politics, the solution may seem statesmanlike, but as constitutional argument, it leaves you hungry an hour later." [51]

Judge Bork has even suggested that employment and education issues are too subjective for judicial review.

"Certain forms of discrimination present the problem of criteria that are real but cannot easily be established by evidence. It is easy enough to establish whether a person has been turned away from a restaurant because of race or sex—the variables are few. But employment discrimination presents a different problem. The decision concerning who is to be hired or not hired, who is to be promoted or passed over, does not always, or perhaps even usually, turn upon objective and quantifiable data. Such decisions also rest upon elements of judgment and intuition. On a case-by-case basis, therefore, the employer's decision will usually turn out to be unreviewable. Unless he admits bias, it is almost impossible to prove that he discriminated. * * *

"We are beginning to see that there are areas in which a government of men rather than of laws is to be preferred." [52]

B. Sex Discrimination

Judge Bork has an even more restrictive view of the Fourteenth Amendment and the role of the Supreme Court with respect of sex discrimination.

This flows directly from Judge Bork's radical judicial philosophy. In 1984, Judge Bork wrote: "The Constitution has provisions that create specific rights. These protect, among others, racial, ethnic, and religious minorities." [53] Women are conspicuously absent from this list. Judge Bork's view is that because women are not explicitly mentioned in the Fourteenth Amendment, the amendment offers them no distinct constitutional protection. While Judge Bork would not protect racial minorities from most state and local discrimination, he would not protect women under the Constitution from *any* discrimination, federal, state or local.

Judge Bork has also opposed passage of the Equal Rights Amendment, stating that "the role that men and women should play in society is a highly complex business, and it changes as our culture changes." [54] This leads Judge Bork to conclude that judges should not be asked to decide "all of those enormously sensitive, highly political, highly cultural issues" that are inherent in determining the meaning of equality.[55]

Even where Congress has legislated in favor of sexual equality, Judge Bork has declined to enforce statutory guarantees by adopting narrow rules of construction. Thus, in *Vinson v. Taylor*,[56] Judge Bork argued that Title VII of the 1964 Civil Rights Act does not protect women against on-the-job sexual harassment. His view was unanimously rejected by the Supreme Court in an opinion written by Chief Justice Rehnquist. "*[Without question,*" the Court held, "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." [57]

Judge Bork adopted a similarly narrow construction of the Occupational Safety and Health Act of 1970, which requires an employer to provide "each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. . . ." [58] Despite the statute's broad remedial goals, Judge Bork rejected a challenge to a company policy demanding that women of childbearing age be surgically sterilized as a condition of employment in certain plant departments.[59] Judge Bork held that relief could be granted only if "the words of the statute *inescapably*" require it.[60]

C. Church/State

Judge Bork has never been called upon to rule on the religion clauses of the First Amendment. But he has, in a series of recent unpublished speeches,[61] offered an interpretation of the religion clauses that is contrary to traditional legal thought and the weight of historical evidence.[62]

In Judge Bork's view:

"The religious clauses state simply that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' The establishment

clause might have been read merely to preclude the recognition of an official church, or to prevent discriminatory aid to one or a few religions. The free exercise clause might have been read simply to prohibit laws that directly and intentionally penalize religious observance. Instead both have been interpreted to give them far greater breadth and severity." [63]

Far from regarding government support of religion as a violation of the Establishment Clause and a threat to religious freedom, Judge Bork sees danger in maintaining a wall of separation between church and state, a wall which he believes has led to a dangerous "privatization of morality." [64]

"There may be in man an ineradicable longing for the transcendent. If religion is officially removed from public celebration, other transcendent principles, some of them very ugly indeed, may replace them." [65]

Whatever "political divisiveness" may be caused by the presence of religious "symbolism" in public celebrations, Judge Bork believes the "thoroughgoing exclusion of religion is . . . an affront and . . . the cause of great divisiveness." [66] Thus, Judge Bork criticizes well-settled Supreme Court establishment doctrine, calling it "rigidly secularist." [67]

Judge Bork's articulated philosophy suggests that he would not permit the Supreme Court to overrule local laws that have an overtly religious purpose.[68] According to Judge Bork, "[t]he first amendment was not intended to prohibit the *nondiscriminatory* advancement of religion, so long as religious belief was not made a requirement in any way." [69] On those grounds, he has criticized the Supreme Court's decision in *Aguilar v. Felton*, 473 U.S. 402 (1985), striking down the use of public funds to pay teachers in religious schools.[70]

More broadly, Judge Bork supports government action that generally advances religion.[71] He therefore welcomes, "the reintroduction of some religion into the public schools and some greater religious symbols in our public life." [72] He dismisses the threat of entanglement by noting that "government is inevitably entangled with religion." [73]

Judge Bork would even limit the federal court's power to hear First Amendment claims that implicate religion. Well-settled doctrine allows an individual to sue to stop the expenditure of government funds for religious purposes. Judge Bork contends this doctrine is wrong and "bring[s] into court cases in which nobody could show a concrete harm." [74]

If adopted, Judge Bork's position on the establishment clause could return prayer to the schools, allow nondiscriminatory state aid to religious institutions, and use the powerful arm of the state to coerce personal morality in vast and varied ways.

Judge Bork likewise criticizes the "breadth and severity" [75] of the Free Exercise Clause, as interpreted by the Supreme Court. Twenty years ago, the Court stated: "[I]t is too late in the day to doubt that the libert[y] of religion may be infringed by the denial of or placing of conditions upon a benefit or privilege." [76] Justice O'Connor confirmed that test last Term:

"Only an especially important governmental interest pursued by narrowly tailored means can justify enacting a sacrifice of First Amendment freedoms as the price for an equal share of the rights, benefits, and privileges enjoyed by other citizens." [77]

The Court has thus struck down laws that condition government benefits on an individual's relinquishment of the right to free exercise.[78]

Judge Bork apparently rejects this doctrine. He has criticized the Supreme Court for having "require[d] government to make special allowances for activity motivated by religious belief of such scope that, if government had done the same thing, without a court order, it would have violated the Establishment Clause." [79] In short, he does not believe that the Free Exercise Clause bars indirect abridgments of religious freedom, no matter how severe.

D. Freedom of Speech and Press

Judge Bork believes that the First Amendment protects only speech that relates to the political process mandated by the Constitution, *e.g.*, voting and legislative action. He bases this view on the structure of government established by the Constitution—"a form of government that would be meaningless without freedom to discuss government and its policies." [80]

At one point he wrote that the First Amendment protects only speech that is "explicitly political. There is no basis for judicial intervention to protect any other form of expression, be it scientific, literary or . . . pornographic." [81] More recently, he stated that the First Amendment protects speech that "is essential to running a republican form of government," including "speech about moral issues, speech about moral values, religion and so forth, all those things [that] feed into the way we govern ourselves." [82]

In situations where Judge Bork seeks the First Amendment as applying, he is generally protective of speech.[83] Judge Bork has argued that political dialogue should be absolutely immune from libel claims. Going beyond current Supreme Court doctrine, Judge Bork's concurrence in *Ollman v. Evans* [84] urged absolute immunity for a newspaper report that a Marxist professor "had no status within the profession." [85] According to Judge Bork, the professor was "not simply a scholar," but rather "an active proponent . . . of Marxist politics," [86] and therefore had "to accept the banging and jostling of political debate, in ways that a private person need not . . ." [87] He wrote:

"Those who step into areas of public dispute, who choose the pleasures and distractions of controversy, must be willing to bear criticism, disparagement, and even wounding assessments. Perhaps it would be better if disputation were conducted in measured phrases and calibrated assessments, and with strict avoidance of the ad hominem; better, that is if the opinion and editorial pages of the public press were modeled on the Federalist Papers. But that is not the world in which we live, ever have lived, or are ever likely to know, and the law of the First Amendment must not try to make public dispute safe and comfortable for all the participants." [88]

Judge Bork has similarly criticized those restrictions on campaign finance that were upheld by the Supreme Court in *Buckley v. Valeo* [89] on the ground that they permit the "government [to] regulate ordinary political speech and thus influence the outcomes of democratic processes." [90] And he ruled that a photomontage depicting President Reagan could not be banned from the District of Columbia subways, emphasizing that the poster "conveys a political message" and that the subway had transformed itself into a public forum.[91]

Judge Bork's view that political debate should be unregulated by the government also leads him to reject the fairness doctrine.[92] Contending that "fairness" can better be assured through competition than regulation, he has urged the Supreme Court to "revisit this area of the law and either eliminate the distinction between print and broadcast media . . . or announce a constitutional distinction that is more usable than the present one." [93]

On the other hand, Judge Bork refused to protect the speech of political demonstrators who sought to picket outside foreign embassies in Washington, D.C. He contended that criticism of foreign governments whose embassies we host would produce "ill treatment of ambassadors to the United States . . . [and] adversely affect the interest of the United States." [94]

In addition, Judge Bork excludes from his definition of protected political speech any advocacy of violence or civil disobedience designed to achieve a change in the government. Judge Bork would forbid such advocacy even where it represents no "clear and present danger." [95] He would, therefore, give no constitutional protection to the work of writers advocating civil disobedience, such as Thoreau, Gandhi or Martin Luther King, Jr. "Speech advocating . . . the frustration of . . . government through law violation has no value in a system whose basic premise is democratic rule," Judge Bork has asserted.[96]

He thus disagrees with many of the leading free speech cases of the last half-century in which the Supreme Court has held that speech advocating the overthrow of government is constitutionally protected unless it is intended and likely to produce imminent, lawless action.[97] According to Judge Bork:

"The tradition of support for civil disobedience and even violence is deeply disturbing, particularly disturbing because it is so firmly established in the institutions that mold opinions." [98]

The Supreme Court, by contrast, has firmly adopted the view articulated by Justice Brandeis in his famous concurrence in *Whitney* v. *California*,

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the civil apprehended is so imminent that it may befall before there is opportunity for full discussion."[99]

Judge Bork would permit any local community to bar speech it found offensive. At the time of the Skokie case, for example, he said that "the fundamental issue raised by Skokie . . . is whether a creed of that sort ought to be allowed to find voice anywhere in America."[100] He found it "remarkable" that "the legal order" would assume "that Nazi ideology is constitutionally indistinguishable from republican belief." [101]

Furthermore, Judge Bork's view of the First Amendment as limited to "political" speech places the entire realm of artistic expression outside the protection of the First Amendment or, at best, "towards the outer edge." [102] "It is sometimes said," Judge Bork has asserted, "that works of art . . . are capable of influencing political attitudes. But . . . [they] are not on that account immune from regulation." [103] This radically restrictive view of the First Amendment, coupled with Judge Bork's deference to legislated morality, raises the possibility that books

like *Ulysses*, or indeed the variety of books that have more recently been the subject of attempted censorship by local school boards, could once again be banned if deemed offensive to the public at large.

Although Judge Bork has an expansive view of the Supreme Court's role in protecting certain forms of expression under the First Amendment, Judge Bork is in fact far outside the broad range of traditional First Amendment jurisprudence. He would narrow the Supreme Court's protection of free expression primarily to political speech. Even within this category, he excludes speech that advocates civil disobedience or "offensive" political ideologies.

Thus, Judge Bork's approach to the First Admendment would diminish the Supreme Court's role in protecting freedom of expression from governmental trespass and once again allow local majorities to determine what is acceptable.

E. Privacy

Judge Bork does not find a right to privacy in the Constitution. It is a right he says, that "strikes without warning" and lacks "intellectual structure." [104]

"[T]he so-called right to privacy cases, which deal mainly with sexual morality and which generally conclude that sexual morality may be regulated only in extreme cases [,] . . . share the common theme that morality is not usually the business of government but is instead primarily the concern of the individual." [105]

Accordingly, Judge Bork rejects Supreme Court doctrine that has recognized, over the last half-century, a constitutional right to privacy in a wide variety of contexts,[106] including: the purchase and use of contraceptives by married people,[107] single individuals,[108] and minors;[109] the decision of a woman, in consultation with her physician, to determine whether to have an abortion;[110] a parent's right to defend his or her relationship with a child, whether the parent is mother or father, married or unmarried,[111] and, the individual's right to possess obscene material in the privacy of the home.[112]

As to *Roe v. Wade*, which upholds a woman's right to control reproduction, Judge Bork has testified: "I am convinced, as I think most legal scholars are, that *Roe v. Wade* is, itself, an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of State legislative authority." [113]

As a Court of Appeals judge, Judge Bork has refused to enforce claims of privacy that he is empowered to adjudicate, contending that a lower court should not enforce a right unless the Constitution, by its express terms, or a Supreme Court decision squarely on point, prevents the government from taking a challenged action.[114]

Judge Bork's comments about privacy reveal a great deal about his judicial philosophy. Judge Bork grants the community broad power over the individual. The Supreme Court, by contrast, has repeatedly recognized what Justice Brandeis described as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." [115] Within that zone of privacy, the individual is protected against unwarranted community intrusion.[116]

Judge Bork denies the right to privacy because it is not explicitly mentioned in the Constitution. However, as Judge Bork has acknowledged in the libel context, "[a] judge who refuses to see new threats to an established constitutional value, and hence provides a crabbed interpretation that robs a provision of its full, fair and reasonable meaning, fails in his judicial duty." [117]

F. Criminal Law

Judge Bork's record in the area of criminal law also reveals a disregard of Supreme Court precedent at the expense of fundamental rights.

It is well-settled, for example, that the Fourth Amendment provides people suspected of crime with a series of protections against unreasonable searches including the exclusion of evidence seized in violation of the procedures mandated by the Amendment. Judge Bork has suggested that the exclusionary rule be abandoned. "The only good argument [for the exclusionary rule] really rests on the deterrent rationale, and it's time we examine that with great care to see how much deterrence we are getting and at what cost."[118] He takes this position in the face of overwhelming evidence that the exclusionary rule has virtually no negative effect on law enforcement or crime rates and would not, if abolished, enhance public safety. Because Judge Bork opposes the exclusionary rule, however, he would impose a heavy burden on those who support it to show that its effects are socially beneficial.

In sharp contrast, Judge Bork endorses the death penalty without any effort to justify its deterrent effect, relying on the references in the Fifth and Fourteenth Amendments to "capital offenses" and the "deprivation of life." He does not believe that the Eighth Amendment, which bars "cruel and unusual punishment," provides any limitations on those clauses, disputing that the standard of what is cruel and unusual should evolve over time.[119]

In general, Judge Bork's approach to criminal appeals reflects little respect for the rights of the innocent who may be mistakenly accused, or for the role of the courts in protecting those rights.[120]

In *United States* v. *Mount*, Judge Bork argued that the court's supervisory power could *never* be invoked to exclude evidence obtained by means which shock the conscience,[121] although the issue was not before the court (indeed the doctrine warranted only a footnote in the majority decision).[122] Judge Bork insisted that the Supreme Court had created a general bar against the use of supervisory power to suppress evidence, stating:

"[O]ur supervisory powers have been substantially curtailed by the Supreme Court's recent decision in *United States* v. *Payner*, 447 U.S. 727 (1980)." [123]

In fact, the Supreme Court had specifically disavowed the construction which Judge Bork placed on its opinion, noting:

"[O]ur decision today does not limit the traditional scope of the supervisory power in any way." [124]

Although criminal law is not an area in which civil liberties has fared well in the Supreme Court in recent years, Judge Bork would go much further than existing Supreme Court rulings to cut back on due process rights.

G. Access to the Courts

Judge Bork has consistently closed the courthouse door to individuals seeking relief for a broad range of constitutional and statutory violations.[125] His radical restriction of federal jurisdiction reflects the limited role he grants the federal courts to vindicate individual rights.

Words like "standing," "Justiciability" and "immunity" may sound far-removed from civil liberties.[126] But as Judge Bork has put it, "[I]n constitutional law philosophical shifts often occur through what appears to be mere tinkerings with technical doctrines." [127] Whether a court denies a civil liberties claim on the merits or refuses to hear a civil liberties claim on jurisdictional grounds, the effect is the same: Civil liberties are denied.

Judge Bork enforces jurisdictional bars in an extreme manner that often places him in a position of dissent from his colleagues.[128] In other cases, where his judicial colleagues have held that a claim is not justiciable, Judge Bork has written separately to urge a broader rule to deny access for civil liberties claims to an even larger group of potential litigants.[129] He gives little apparent weight to the need to enforce the Constitution against violations by the political branches of government or to the central importance of federal courts in enforcing civil liberties.

1. Restrictions on Standing to Sue in Federal Court

Standing is the determination of whether a particular person is the proper party to bring a matter to the court for adjudication. Judge Bork has explicitly stated that standing doctrine should limit "the number of occasions upon which courts will frame constitutional principles to govern the behavior of other branches and of states." [130]

It is not simply that Judge Bork strictly adheres to existing limits on standing.[131] Rather, Judge Bork pushes the law, in dissent and concurrence, beyond existing limits.

For example, Judge Bork has argued in dissent, that "[w]e ought to renounce outright the whole notion of congressional standing." [132] Judge Bork acknowledges that no Supreme Court precedent supports his position. Nonetheless, he insists: "Though we are obligated to comply with Supreme Court precedent, the ultimate source of constitutional legitimacy is compliance with the intentions of those who framed and ratified our Constitution." [133]

Similarly, Judge Bork has argued that associations should not be permitted to sue for monetary damages on behalf of their members.[134] The Supreme Court has expressly allowed associations—for example, environmental and other public interest groups—to sue on behalf of their members under specific circumstances.[135] Judge Bork, by contrast, would "frame a *per se* rule against an association's standing . . . to assert damage claims on behalf of its members." [136]

2. Expansion of Sovereign Immunity Protection for the Government

A second way in which Judge Bork has attempted to limit access to the federal courts is by expanding the scope of sovereign immunity.[137] Sovereign immunity is a medieval doctrine that assumes the monarch can do no wrong. In its modern form, the Executive cannot be sued for illegal action unless consent has been given to suit. Thus, the doctrine protects the government from suit even if individuals have suffered a violation of their rights. Judge Bork has frequently argued to expand such immunity.[138]

3. Narrow Construction of Jurisdictional Statutes

Judge Bork has also urged extremely narrow interpretations of statutes creating federal court jurisdiction. Even where Congress has passed legislation requiring the federal courts to hear certain claims, Judge Bork has declined to find jurisdiction.[139]

In restricting access to the court, Judge Bork firmly rejects the remedial tradition which we have come to associate with the federal judiciary.

H. Executive Power

Judge Bork's judicial philosophy can be understood as an attack on the basic notion of checks and balances. One aspect of that philosophy is the extremely limited role he grants to the courts in mediating disputes between the individual and the government. Another aspect is his willingness to enlarge the power of the presidency at the expense of the legislatures, the judiciary and civil liberties.

As Solicitor General, Judge Bork argued that members of Congress lacked standing to challenge his firing of Archibald Cox. A federal court disagreed and also found the firing illegal.[140]

Judge Bork has also expressed views suggesting that the Independent Counsel Act[141] has serious constitutional defects. Testifying before Congress on bills that would have shifted control over appointment and removal of a Special Prosecutor from the President to Congress, Judge Bork stated: "To suppose that Congress can take that duty from the Executive and lodge it either in itself or in the courts is to suppose that Congress may b[y] mere legislation alter the fundamental distribution of powers dictated by the Constitution."[142]

In an exchange with Senator Burdick, Judge Bork asserted that Congress must be satisfied with the President's "promise" not to remove the Special Prosecutor.

"Senator BURDICK. This is one of the things that bother[s] me, Mr. Bork. The President, when Mr. Cox was dismissed, contended that he had the power to do so regardless of the contract. Is that not correct?

"Mr. BORK. The President said he had the power to do so regardless of the charter, yes.

"Senator BURDICK. And any charter we make here, at this time, still does not change the powers of the President?

"Mr. BORK. No; it does not.

"Senator BURDICK. In other words, regardless of what we do, the President has the inherent power to dismiss the Special Prosecutor?

"Mr. BORK. I admit the President has the legal power. I think he has made a promise to the American people."[143]

Judge Bork did indicate that if the Attorney General were to appoint the Special Prosecutor, without Senate confirmation, Congress might be able to impose conditions on removal. Under no circumstances, however, could Congress *prevent* the President from removing the Special Prosecutor.

Turning to the question of the President's authority to use military force without congressional approval, Judge Bork, in 1971, defended President Nixon's decision to bomb Cambodia, insisting that Congress had no power to limit the President's discretion to stage the attack:

"[T]here is no reason to doubt that President Nixon had ample constitutional authority to order the attack upon the sanctuaries in Cambodia. . . . That authority arises both from the inherent powers of the Presidency and from congressional authorization. *The real question in this situation is whether Congress has the constitutional authority to limit the President's discretion with respect to this attack.*"[144]

Contending that the Gulf of Tonkin Resolution amounted to a declaration of war against North Vietnam, Judge Bork argued that the President could claim a free hand to execute military and strategic "details", including the attack on a third country.

"I arrive, therefore, at the conclusion that President Nixon had full constitutional power to order the Cambodia incursion, and that Congress cannot, with constitutional propriety, undertake to control the details of the incursion. This conclusion in no way detracts from Congress' war powers, for the body retains control of the issue of war or peace. It could end our armed involvement in Southeast Asia and it can forbid entry into new wars to defend governments there."[145]

Judge Bork has asserted exclusive Executive power in other contexts as well. Thus, Judge Bork testified that Congress has no power to require Executive intelligence agencies to obtain a warrant before wiretapping an American citizen suspected of engaging in clandestine intelligence activities on behalf of a foreign country.[146]

On the bench, Judge Bork would insulate the President from challenge in court by legislators. For example, *Crockett v. Reagan* involved a suit by 29 members of Congress challenging the legality of the President's maneuvers in El Salvador.[147] Judge Bork concurred separately, stating that legislator standing would violate the Constitution—notwithstanding two prior panel decisions rejecting that view.

In *Abourezk v. Reagan*,[148] Judge Bork once more advocated deferring to the Executive at the expense of a congressional enactment that sought to protect civil liberties. Responding to the Executive's repeated exclusion from this country of aliens belonging to proscribed organizations, Congress passed the McGovern Amendment, which generally bars exclusion of an alien based on political views or organizational affiliation. *Abourezk* concerned the denial of visas to four aliens, including the Nicaraguan Minister of the Interior and a former NATO general who had become an advocate of nuclear disarmament. The majority held that the visa denials appeared to circumvent the McGovern Amendment. Judge Bork dissented, stating that the majority opinion demonstrated "a lack of deference to the determinations of the Department of State . . . ."[149]

Judge Bork's deference to the Executive, at the expense of Congress, is evident as well in his refusal to find federal jurisdiction over claims based on violations of international human rights, despite a statutory enactment providing for such jurisdiction. Plaintiffs in *Tel-Oren v. Libyan Arab Republic*[150] were Israelis who alleged a violation of international law arising out of the deaths of children in an attack on a school bus by the Palestinian Liberation Organization. Judge Bork argued, in effect, that the 1978 federal statute upon which plaintiffs relied for jurisdiction created jurisdiction only over legal claims that existed in the eighteenth century.

Similarly, in *Persinger v. Islamic Republic of Iran*,[151] Judge Bork wrote a decision refusing to allow a former Iranian hostage to sue Iran in United States courts, despite a provision in the Foreign Sovereign Immunity Act permitting suits against foreign governments for injuries occurring within "all territory and waters, continential or insular, subject to the jurisdiction of the United States."[152] Plaintiff's injuries occurred within the American Embassy. Judge Bork concluded, however, that embassies were not sufficiently within the jurisdiction of the United States to trigger jurisdiction under the statute.[153]

Finally, Judge Bork has relied on a cramped view of the statute of limitations to bar review of the Executive policy that placed Japanese-Americans in internment camps during World War II. The victims of that internment policy sought compensation for lost property in *Hohri v. United States*.[154] Plantiff's claims turned on whether military necessity justified their internment. Had the claims been brought earlier, they would have been dismissed due to the Court's war-time deference to Congress and the Executive. Recently, however, Congress has disclosed documents establishing that military necessity had never existed. Judge Bork nevertheless found plaintiffs' claims to be time-barred.

Judge Bork's views on Executive power also lead him to shield Executive action from the checks-and-balances of public scrutiny.

Thus, Judge Bork has given a narrow reading to the Freedom of Information Act, a statute designed to promote democratic accountability by opening up government processes to review. Judge Bork frequently urges a restrictive interpretation of the statute, which prevents disclosure of information to reporters, research groups, and others.

For example, in *McGehee v. C.I.A.*, 697 F.2d 1095 (D.C. Cir. 1983), Judge Bork argued against even *in camera* inspection of documents pertaining to the "People's Temple" in Guyana, which the C.I.A. had withheld from a journalist for more than two years. The majority wrote: "[W]here, as here, an agency's responses to a request for information have been tardy and grudging, courts should be sure they do not abdicate their own duty."[155] Judge Bork, by contrast, found no evidence of bad faith on the part of the agency, despite its dilatory and evasive behavior.

Second, Judge Bork would insulate the process of administrative deliberation by restricting access to information about the deliberative process and thereby often restrict effective lobbying. Indeed, he has stated that "[c]oncern about the effect of lobbying on agencies may itself" bar access to information.[156]

Third, Judge Bork would enlarge the scope of Executive privilege, which he describes as "an attribute of the duties delegated to each of the branches by the Constitution."[157] He contends that to restrict the privilege "to the President himself" would be "troubling" because it "ignores the President's need, both long-established and all the more imperative in the modern administrative state, to delegate his duties."[158] Judge Bork's judicial colleagues criticized his effort "to extend the privilege . . . to the entire Executive Branch, [and thereby] create an unnecessary sequestering of massive quantities of information from the public eye."[159]

IV. CONCLUSION

This concludes our report on Judge Bork's record. We believe it fairly characterizes his views, and the judicial philosophy behind it, based on the entire body of his work to the extent it has been available to us.

On the basis of this record, we do not believe it is possible to locate Judge Bork within the broad range of acceptable judicial thought consistent with a commitment to liberty and democracy, and the institutions designed to protect and assure both. Nor do we think it possible to locate Judge Bork within the conservative judicial tradition exemplified by Justices Felix Frank-

furter, John Harlan or, lately, Justice Lewis Powell.

Judge Bork may well have strong intellectual credentials, but that is not enough. The Senate has a constitutional responsibility to scrutinize a nominee's judicial philosophy and determine whether it is consistent with the function of the Supreme Court in protecting individual rights. Judged by that standard, Robert Bork's nomination as Associate Justice of the Supreme Court should be rejected.

FOOTNOTES

[1] The memorandum focuses on opinions which Judge Bork wrote (whether for the majority, concurring or in dissent), in order to distill Judge Bork's judicial philosophy from his own words. The memorandum does not address opinions which Judge Bork silently joined.

[2] Judge Bork provided texts of his unpublished speeches to the Senate Judiciary Committee. Copies are available from the ACLU Washington Office, 122 Maryland Ave., N.E. (202-544-1681) as are copies of all of Judge Bork's published articles and other writings. A complete list of this material is available from the ACLU.

[3] *See generally* Bork, *Neutral Principles and Some First Amendment Problems*, 147 Indiana L.J. 1 (1971) [hereinafter *"Neutral Principles"*].

[4] Bork, *Morality and the Judge*, Harper's 28, 29 (May 1985).

[5] *See* Notes 10-22, *Infra.*

[6] *The Human Life Bill: Hearing on S. 158 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. 308, 310, (1982) (statement of Professor Bork).

[7] Bork, *Neutral Principles, supra*, at 9.

[8] *Id.*

[9] *Griswold v. Connecticut*, 381 U.S. 479 (1965); *see* Bork, *Neutral Principles, supra*, at 11.

[10] *Shelley v. Kraemer*, 334 U.S. 1 (1948); *see* Bork, *Neutral Principles, supra*, at 15.

[11] *Levy v. Louisiana*, 391 U.S. 68 (1968); *see* Bork, *Neutral Principles, supra*, at 12.

[12] *Cohen v. California*, 403 U.S. 15 (1971); *see* Bork, "The Individual, the State and the First Amendment," Unpublished Speech, Univ. of Michigan (1979) (reported as 1977 or 1978).

[13] *E.g., Brandenburg v. Ohio*, 395 U.S. 444 (1969); *see* Bork, *Neutral Principles, supra*, at 23.

[14] *E.g., Roe v. Wade*, 410 U.S. 113 (1973); *see The Human Life Bill: Hearing on S.158 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, supra*, at 310.

[15] *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *see* Bork, *Neutral Principles, supra*, at 12.

[16] *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966); *Katzenbach v. Morgan*, 384 U.S. 641 (1966); *see Nominations of Joseph T. Sneed to be Deputy Attorney General and Robert H. Bork to be Solicitor General: Hearings before the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. at 5, 16-17 (1973) (statement of R. Bork).

[17] *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978); *see* Bork, *The Unpersuasive Bakke Decision*, The Wall Street Journal, at 8, col. 4 (July 21, 1978).

[18] *Aguilar v. Felton*, 473 U.S. 402 (1985); *Engel v. Vitale*, 370 U.S. 421 (1962); *see* Bork, Unpublished Speech, Brookings Institute, Washington, D.C. (Sept. 12, 1985), at 3.

[19] *See* Bork, *Judicial Review and Democracy*, Society 5 (Nov.-Dec. 1986); Bork, *Styles in Constitutional Theory*, 26 S. Texas L.J. 383 (1985).

[20] Bork, *Morality and the Judge, supra*, at 28.

[21] Rehnquist, *The Making of a Supreme Court Justice*, 29 Harv. L. Rec. 7 (Oct. 8, 1959).

[22] 4 *The Founders' Constitution* 32-33 (Kurland & Lerner, eds. 1987).

[23] *Id.* at 30; *see generally* Black, *A Note on Senatorial Consideration of Supreme Court Nominees*, 79 Yale L.J. 657, 660-62 (1970).

[24] 4 *The Founders' Constitution, supra*, at 31.

[25] *Id.* at 32-33.

[26] *Id.* at 36. This formulation—nomination by the President, and appointment with the advice and consent of the Senate—was apparently patterned after the "experience of 140 years in Massachusetts." *Id.* at 32.

[27] Tribe, *God Save This Honorable Court*, 79-80 (1985).

[28] Schwartz, *The Senate's Right to Reject Nominees*, The New York Times, at A27, col. 2 (July 3, 1987).

[29] *Id.* Until 1900, the Senate rejected more than one out of four presidential nominees; since 1900, only one out of every 13 nominees has been rejected.

[30] The rejected nominees include: John Crittenden, John Quincy Adams' nominee, whose nomination in 1829 was never voted on because of his strong Whig leanings; George Woodward, who was rejected in 1845 by a vote of 29-20 due to his anti-immigrant views; Secretary of State Jeremiah Black, James Buchanan's nominee, whose opposition to the abolition of slavery led to his 26-25 rejection; and Caleb Cushing, Ulysses S. Grant's nominee, who withdrew after discovery of his wartime correspondence with Confederate President Jefferson Davis. Tribe, *God Save This Honorable Court, supra*, at 86-89. The Senate was particularly strong for approximately two decades after 1837, and ten of the 18 nominations made by the presidents serving between Jackson and Lincoln failed to win Senate confirmation. For example, in 1844, when Justice Baldwin died, two presidents sent a total of five nominations to the Senate before his seat was finally filled, two and one-half years later. *Id.* at 58-59.

[31] Black, *A Note on Senatorial Consideration of Supreme Court Nominees, supra*, at 660.

[32] *Id.* at 659 (emphasis added).

[33] Historically, the Senate has adopted a more deferential role in reviewing the President's Executive appointments; it has rejected a higher percentage of Supreme Court nominations than for any other national office. Tribe, *God Save This Honorable Court, supra*, at 78.

[34] Bork, *Neutral Principles, supra*, at 11. Judge Bork has not authored any equal protection cases while on the bench. He has, however, acknowledged in dictum that discrimination based on race, religion or ethnicity is constitutionally prohibited. *See Dronenburg v. Zech*, 741 F.2d 1388, 1397 (D.C. Cir. 1984).

[35] Bork, *Neutral Principles, supra*, at 11. Judge Bork's approach to the constitutional provisions regarding private property—the Contract and Takings Clauses—is significantly different. While admitting that the "intention underlying" these clauses "has been a matter of dispute," he suggests that the clauses "have not been given their proper force" and can be utilized to limit state regulation of private property. Bork, *The Constitution, Original Intent, and Economic Rights*, 23 San Diego L. Rev. 823, 829 (1986). This expansionist view is reflected in his judicial decisions. *E.g., Jersey Central Power and Light Co. v. Federal Energy Regulatory Comm.*, 768 F.2d 1500, 1506, *vacated and remanded*, 810 F.2d 1168 (D.C. Cir. 1987) (en banc) (striking down utility rate regulation); *Silverman v. Barry*, 727 F.2d 1121 (D.C. Cir. 1984) (striking down local zoning ordinance).

[36] Bork, *Neutral Principles, supra*, at 11. The Supreme Court ruled otherwise in *Shelley v. Kraemer*, 334 U.S. 1 (1948).

[37] Bork, *Neutral Principles, supra*, at 11. The Supreme Court ruled otherwise in *Reitman v. Mulkey*, 387 U.S. 369 (1967).

[38] Bork, *Neutral Principles, supra*, at 12. The Supreme Court has ruled otherwise. *See Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Levy v. Louisiana*, 391 U.S. 68 (1968).

[39] *Equal Education Opportunities Act of 1972: Hearings on S. 3395. Before the Subcomm. on Education of the Senate Comm. on Labor and Public Welfare*, 92nd Cong., 2d Sess. 1343 (1972). The Supreme Court ruled otherwise in *City of Rome v. United States*, 446 U.S. 156 (1980).

[40] U.S. Dept of Agriculture v. Moreno, 413 U.S. 528, 534 (1973); *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

[41] *E.g., Johnson v. Transportation Agency, Santa Clara County*, 55 U.S.L.W. 4379 (1987).

[42] *E.g., Frontiero v. Richardson*, 411 U.S. 677 (1973) (sex discrimination). *See also* notes 38 and 40, *supra.*

[43] bork, *The Impossibility of Finding Welfare Rights in the Constitution*, 3 Wash. U.L.Q. 695, 701 (1979).

[44] *Equal Educational Opportunities Act of 1972: Hearings on S. 3395 Before the Subcomm. on Education of the Senate Comm. on Labor and Public Welfare, supra*, at 1343.

[45] *Id.*

[46] Bork, *"The Supreme Court Needs a New Philosophy*, Fortune 138, 163 (Dec. 1968).

[47] Bork, *Neutral Principles, supra*, at 18. Judge Bork suggests that the Guarantee Clause of the Constitution requires "rational" reapportionment to protect majority rule, but does not "easily translate[ ] into the one person, one vote requirement. . . ." *Id.* at 19.

[48] *Nominations of Joseph T. Sneed to be Deputy Attorney General and Robert E. Bork to be Solicitor General: Hearings before the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. 5, 17 (1973) (statement of R. Bork).

[49] *Id.* at 16.

[50] *Regents of the University of California v. Bakke, supra*, 438 U.S. 265.

[51] Bork, *The Unpersuasive Bakke Decision, supra*, at 8, col. 5.

[52] Bork, *We Suddenly Feel That Law Is Vulnerable*, Fortune 115, 136 (Dec. 1971).

[53] *Dronenburg v. Zech*, 741 F.d 1388, 1397 (D.C. Cir. 1984) (Bork, J.).

[54] McGuigan, *Judge Bork Is A Friend Of The Constitution*, 11 Conservative Digest 91, 95 (Oct. 1985). Judge Bork explained that these were views held ten years ago, and that, as a judge, he no longer feels free to comment on the Equal Rights Amendment.

[55] *Id.*

[56] 753 F.2d 141, *reh'g denied*, 760 F.2d 1330 (D.C. Cir. 1985) (Bork, J., dissenting), *Aff'd, Meritor Savings Bank v. Vinson*, 106 S. Ct. 2399 (1986).

[57] *Meritor Savings Bank v. Vinson, supra*, 106 S. Ct. at 2404 (emphasis added).

[58] 29 U.S.C. § 654(a)(i).

[59] *Oil, Chemical & Atomic Workers Int'l Union v. American Cyanamid Co.*, 741 F.2d 444 (D.C. Cir. 1984) (Bork, J.).

[60] *Id.* at 448 (emphasis added).

[61] *See* Bork, Unpublished Speech, Brookings Institute, Washington, D.C. (Sept. 12, 1985) [hereinafter, *Brookings Speech*]; Unpublished Speech, "Comments on Professor Morawetz's Paper," Woodrow Wilson International Center for Scholars, [Princeton University] (June 13, 1985); Unpublished Speech, University of California, Berkeley, Cal. (Apr. 29, 1985) [hereinafter, *Berkeley Speech*]; Unpublished Speech, "Religion and the Law," John M. Olin Center for Inquiry Into the Theory & Practice of Democracy, Univ. of Chicago (Nov. 13, 1984) [hereinafter, "Religion and the Law."]

[62] *See generally*, Levy, *The Establishment Clause: Religion and the First Amendment* (1986); Swomley, *Religious Liberty and the Secular State* (1987).

[63] *Brookings Speech, supra*, at 1.

[64] *Brookings Speech, supra*, at 6.

[65] *Brookings Speech, supra*, at 12; *accord* Bork, "Religion and the Law," *supra*, at 15-16.

[66] Bork, "Religion and the Law," *supra*, at 15-16; *accord Brookings Speech, supra*, at 11.

[67] *Brookings Speech, supra*, at 10. He specifically criticizes the current three-prong test for determining violations of the Establishment Clause, which provides: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits its religion, . . . finally, the statute must not foster 'an excessive government entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612-3 (1971), quoting *Walz v. Tax Commission*, 397 U.S. 664 (1970).

[68] Bork, "Religion and the Law," *supra*, at 5.

[69] *Id.* at 6.

[70] Bork, *Brookings Speech, supra*, at 3.

[71] *Id.*

[72] *Id.* at 11.

[73] *Id.* at 3.

[74] Bork, "Religion and the Law," *supra*, at 3-4; *accord Brookings Speech, supra*, at 3-4.

[75] Bork, "Religion and the Law," *supra*, at 2; *accord Brookings Speech, supra*, at 1.

[76] *Sherbert v. Verner, supra*, 374 U.S. at 404.

[77] Bowen v. Roy, 106 S. Ct. 2147, 2167 (1986) (O'Conner, J., concurring in part and dissenting in part).

[78] *Hobbie v. Unemployment Appeals Comm. of Florida*, 107 S. Ct. 1046 (1987); *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707 (1981); *Shervert v. Verner, supra*, 374 U.S. at 398 (1963).

[79] *Berkeley Speech, supra*, at 5.

[80] Bork, *Neutral Principles*, at 31.

[81] *Id.* at 20. *See id.* at 26 ("All other forms of speech [than 'explicitly and predominantly political'] raise only issues of human gratification, and their protection against legislative regulation involves the judge in making [illigitimate] decisions . . . ."); *id.* at 27 ("[T]he protection of the first amendment must be cut off when it reaches the outer limits of political speech."); *id.* at 29

("[c]onstitutionally, art and pornography are on a part with industry and smoke pollution.").

[82] Unpaginated Transcript, Public Affairs Television, Inc., *Moyers: In Search of the Constitution #107 Strictly Speaking* (Attorney General Edwin Meese and Judge Robert Bork) (Airdate May 28, 1987).

[83] The principal exception to this speech-protective attitude is Judge Bork's willingness to permit even political speech to be surppressed in furtherance of an alleged foreign policy inteerst. *See Finzer v. Barry*, 798 F.2d 1450 (D.C. Cir. 1976), *cert. granted sub non. Boos v. Barry*, 107 S. Ct. 1282 (1987); *Abourezk v. Reagan*, 785 F2d 1043, 1062, (D.C. Cir.) (Bork, J., dissenting), *cert. granted*, 107 S. Ct. 666 (1986).

[84] *Oilman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984) (Bork, J., concurring).

[85] *Id.* at 996.

[86] *Id.* at 1004.

[87] *Id.*

[88] *Id.* at 993.

[89] 424 U.S. 1 (1976); *see* Bork, "The Individual, the State and the First Amendment," Unpublished Speech, Univ. of Michigan, 1977 or 1978.

[90] *Id.*

[91] *Lebron v. Washington Metropolitan Area Transit Authority*, 749 F.2d 893 (D.C. Cir. 1984) (Bork, J.).

[92] The fairness doctrine requires broadcasters to provide evenhanded coverage of controversial issues. Its constitutionality was upheld by the Supreme Court in *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1967). However, in August of this year, the FCC declared the fairness doctrine unconstitutional on the theory that the factual premises of *Red Lion* were no longer valid. *In re Syracuse Peace Council* (Aug. 6, 1987).

[93] *Telecommunication Research and Action Center v. FCC*, 801 F.2d 501, 509 (D.C. Cir. 1986), *cert. denied*. 55 U.S.L.W. 3821 (1987).

[94] *Finzer v. Barry*, 798 F.2d 1450, 1459 (D.C. Cir. 1986) (Bork, J.), *cert. granted sub nom. Boos v. Barry*, 107 S. Ct. 1282 (1987).

[95] Bork, "The Individual, the State and the First Amendment," *supra*.

[96] Bork, "The Individual, the State and the First Amendment," *supra*.

[97] *E.g., Brandenburg v. Ohio, supra*, 395 U.S. at 444.

[98] Bork, *We Suddenly Feel That Law Is Vulnerable, supra*, at 116.

[99] 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

[100] Bork, "The Individual, the State and the First Amendment," *supra*.

[101] *Id.*

[102] Unpaginated Transcript, Public Affairs Television, Inc., *Moyers: In Search of the Constitution, supra*.

[103] Bork, "The Individual, the State and the First Amendment," *supra*.

[104] McGuigan, *Judge Robert Bork Is A Friend of The Constitution, supra*, at 97.

[105] Bork, *Brookings Speech, supra*, at 6.

[106] Bork, *Neutral Principles*, at 7. *See also* Unpaginated Transcript, Public Affairs, Television, Inc., *Moyers: In Search of the Constitution, Supra.*

[107] *Griswold v. Connecticut, supra*, 381 U.S. 479. The Court protected the activities of medical personnel distributing contraceptives, as well as activities in the privacy of the marital bedroom.

[108] *Eisenstadt v. Baird* 405 U.S. 438 (1972), invalidated a Massachusetts law prohibiting distribution of contraceptives to single people.

[109] *Carey v. Population Services International*, 431 U.S. 678 (1977).

[110] *Roe v. Wade, supra*, 410 U.S. 113 (1973); *Thornburgh v. American College of Obstetricans*, 106 S. Ct. 2169 (1986).

[111] *Stanley v. Illinois*, 405 U.S. 645 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982).

[112] *Stanley v. Georgia*, 394 U.S. 557 (1969).

[113] *The Human Life Bill: Hearings on S. 158 Before the Subcomm. on the Separation of Powers of the Senate Comm. on the Judiciary, supra*, at 310. *See* Greenhouse, *No Grass is Growing Under Judge Bork's Seat*, N.Y. Times, at A18 (Aug. 4, 1987).

[114] Judge Bork refused to recognize a constitutional right to privacy when James L. Dronenburg challenged a government decision dismissing him from the Navy solely on grounds that he engaged in homosexual sex. *Dronenburg v. Zech*, 741 F.2d 1388, 1395 (D.C. Cir. 1984). In *Dronenburg*, Judge Bork speculated that the mere presence of homosexual men in the military causes damage:

"Episodes of this sort are certain to be deleterious to morals and discipline, to call into question the even-handedness of superiors' dealings with lower ranks, to make personal dealings uncomfortable where the relationship is sexually ambiguous, to generate dislike and disapproval among many who find homosexuality morality offensive, and, it must be said, given the powers of military superiors over their inferiors, to enhance the possibility of homosexual seduction." *Dronenburg v. Zech, supra*, 741 F.2d 1398.

Judge Bork's parade of horribles that can result from the presence of male homosexuals on the job stands in sharp contrast to his dismissive attitude toward the problem of male heterosexual harrassment of women. *Vinson v. Taylor, supra.*

Although the Supreme Court in *Bowers v. Hardwick*, 478 U.S. —— (1986), subsequently upheld the constitutionality of state sodomy laws, it specifically did not duplicate Judge Bork's generalized rejection of a constitutional right to privacy.

[115] *Olmstead v. United States*, 277 U.S. 438, 378 (1928) (dissenting opinion).

[116] *See Poe v. Ullman*, 367 U.S. 497, 539 (1961) (Harlan, J., dissenting) ("I believe that a statute making it a criminal offense for *married couples* to use contraceptives is an intolerable and unjustifiable invasion of privacy in the conduct of the most intimate concerns of an individual's personal life.") (emphasis in original).

[117] *Ollman v. Evans, supra*, 750 F.2d at 996.

[118] McGuigan, *An Interview with Robert H. Bork, supra*, at 6.

[119] *Id.* at 5–6.

[120] Similar limitations on access to courts are manifest in Judge Bork's opinions in related areas. *See, e.g., McClam v. Barry*, 697 F.2d 366 (D.C. Cir. 1983) (holding that Section 1983 action alleging police misconduct was barred by plaintiff's failure to comply with local six-month notice requirement); and, *Brown v. United States*, 742 F.2d 1498 (D.C. Cir. 1984) (where majority held that *McClam* was erroneously decided and where Bork dissented, adhering to his reasoning in *McClam*, and taking a more restrictive view of the issue than did Justice Scalia, then a member of the *Brown* majority).

[121] *United States v. Mount*, 757 F.2d 1315, 1320 (D.C. Cir. 1985).

[122] *Id.* at 1318 n. 5.

[123] 447 U.S. 727, 735 n. 8.

[124] 447 U.S. at 735 n.8. In addition, Judge Bork insisted that the Supreme Court had announced a general rule that exclusion of evidence is *never* appropriate unless that remedy would have a deterrent effect on law enforcement practices, 757 F.2d at 1321, attributing to the Court the "holding" that "where the exclusionary rule 'does not result in appreciable deterrence,' its use is not warranted," citing *United States v. Leon*, 468 U.S. 897, (1984).

The cited language is not the holding of *Leon*. It is not even an accurate quotation. Rather, the language appears in a discussion of non-criminal proceedings (in which the exclusionary rule may be less likely to deter misconduct) and is a quotation from an earlier case in whcih the Court declined to extend the rule to civil proceedings:

"[i]f . . . the exclusionary rule does not result in appreciable deterrence, then, clearly, its use *in the instant situation* [federal civil proceedings] is unwarranted." 468 U.S. at 909 [emphasis added], quoting *United States v. Janis*, 428 U.S. 433, 454 (1976).

[125] Bork has also urged Congress to cut back access to the federal courts. He has testified that:

"The only solution to the workload problem is a drastic pruning of jurisdiction of all Federal Courts. . . . So far as the Supreme Court is concerned, part of their [sic] difficulty is self-inflicted. They have, over a period of years, taken on types of cases which the Supreme Court previously did not do and invited a great deal of litigation that previously was not there." *Hearings on S.1847 Before the Subcomms. on Courts and Agency Admin. of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. at 9, 13–14 (1982).

[126] A basic principle of American constitutional law requires that federal courts adjudicate only live cases and controversies between parties who have a real stake in the outcome of the litigation. These requirements are central to our constitutional structrue and serve many vital functions: They assure that cases will be decided in a context in which concrete facts can illuminate abstract principle and that the energy of federal judges will be devoted to cases that truly demand judicial resolution. Nevertheless, if requirements of justiciability are enforced with excessive rigor, individuals with legitimate grievances are denied not only their rights but also their day in court.

[127] Bork, "Religion and the Law," *supra*, at 2.

[128] For example, *Barnes v. Kline*, 759 F.2d 21 (D.C. Cir. 1984) (Bork, J., concurring), *vacated*, 107 S. Ct. 734 (1987), involved a challenge to President Reagan's pocket veto of a human rights certification bill. Bork dissented, on grounds that legislators lack standing. *Brown v. United States*, 742 F.2d 1498 (D.C. Cir. 1984) upheld a prisoner's right to bring a damage action in federal court against prison officials for an alleged violation of his constitutional rights. Bork dissented, saying that the prisoner had not complied with state procedural rules. *Hohri v. United States*, 793 F.2d 304 (D.C. Cir. 1986) (en banc) upheld the rights of Japanese-Americans to challenge government action confiscating their property during World War II. Bork dissented, asserting that the claims should have been filed at the time and are now barred by the statute of limitations. *Bartlett v. Bowen*, 816 F.2d 695 (D.C. Cir. 1987) allowed Medicare beneficiaries to present a First Amendment challenge to restrictions on services in Christian Science nursing homes. Bork dissented, on grounds that the statute does not allow any challenge, even on constitutional grounds, where the claim is for less than $1,000.

[129] *E.g. Robbins v. Reagan*, 780 F.2d 37 (D.C. Cir. 1985) held that the government could close a homeless shelter if alternative housing were provided. Bork concurred, arguing that the court had no jurisdiction to hear the case. *Vander Jagt v. O'Neill*, 699 F.2d 1166 (D.C. Cir. 1983) found no jurisdiction. Bork concurred, articulating broader grounds for denying relief. *Telecommunications Research & Action Center v. Allnet Communications Servs. Inc.*, 806 F.2d 1093 (D.C. Cir. 1986) denied an organization standing to claim money damages for its members in the circumstances of the case. Bork concurred, advocating a *per se* rule barring any organization from suing for money damages for its members. *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984) denied Israeli plaintiffs access to federal courts to redress a tort committed in violation of the law of nations. Bork concurred, arguing that the 1789 statute creating federal jurisdiction over actions in these circumstances had virtually no modern role.

[130] *Barnes v. Kline, supra*, 759 F.2d at 55.

[131] An example of his narrow reading of current law can be found in his limited view of the types of injuries that are sufficient for standing. The Supreme Court has held that plaintiffs must allege a personal injury to have standing. *see, e.g., Gladstone, Realtors v. Village of Bellwood* 441 U.S. 91, 100 (1979); *Sierra Club v. Morton*, 450 U.S. 727, 735 (1972). Judge Bork has rejected claims of injury in circumstances where current law would seem to allow standing. For example, in *Northwest Airlines v. F.A.A.*, 795 F.2d 195 (D.C. Cir. 1986), an airline sued the Federal Aviation Administration to challenge a decision permitting a pilot who had been suspended for intoxication to fly commercial planes. The Airlines claimed that the threat to traffic safety gave it standing to sue. Although this injury is within the zone of interests protected by the Federal Aviation Act, Judge Bork found the injury "far too speculative and conjectural to provide a basis for standing." *Id.* at 202.

Similarly, in *Citizens Coordinating Committee on Friendship Heights v. Washingotn Area Metropolitan Transit Authority*, 765 F.2d 1169 (D.C. Cir. 1985), the court, in an opinion by Judge Bork, denied standing to a plaintiff alleging violations of the Clean Water Act by the Transit Authority's pollution of a stream. The Supreme Court has explicitly ruled that environmental and esthetic injuries are sufficient for standing. *See, e.g., Duke Power Co. v. Carolina Environmental Study Group Inc.*, 438 U.S. 59 (1978); *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973); *Sierra Club v. Morton*, 402 U.S. 727 (1972). Nonetheless, Judge Bork found the alleged noneconomic injury insufficient for standing.

Similarly, where an injury is "indirect," Judge Bork would deny standing to a party challenging government action lest the court become involved "in the continual supervision of more governmental activities than separation of powers concerns should permit." *Haitian Refugee Center v. Gracey*, 809 F.2d 794, 810 (D.C. Cir. 1987). In *Gracey*, a nonprofit corporation that exists to help Haitian refugees sued to stop a federal government program designed to interdict undocumented aliens on the high seas. The plaintiff claimed, in part, that it would be injured in that it could not perform its

counseling function because the government's program kept Haitains from contacting the Center.

The Supreme Court had allowed standing on an almost identical claim in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Moreover, plaintiff alleged that the federal governments program was causing its inability to counsel and that a favorable court decision would allow it to resume couseling, which should have satisfied the requirement that plaintiff allege that the defendant's actions caused the harm and that a favorable court decision is likely to remedy the injury. *See, e.g., Allen v. Wright*, 468 U.S. 737 (1984). Nonetheless, Judge Bork found no standing because of "separation-of-powers principles central to the analysis of Article III." As Judge Edwards argued in dissent, Judge Bork's opinion ignored precedent and created a new limit on standing by ruling that the separation of powers concept leads a court to deny causation where it otherwise factually exists. *Gracey*, 809 F.2d at 826-27 (Edwards, J., dissenting).

[132] *Barnes v. Kline, supra*, 759 F.2d at 41.

[133] *Id.* at 56.

[134] *See Telecommunications Research & Action Center v. Allnet Communication Servs., supra*, 806 F.2d at 1097.

[135] *Hunt v. Washington State Apple Advisory Comm.*, 432 U.S. 333 (1977).

[136] *Telecommunication Research & Action Center v. Allnet Communication Servs., supra*, 806 F.2d at 1097.

[137] *Judge Bork's expansive view of sovereign immunity takes the form of narrowly construing the provisions of the Federal Torts Claims Act, the primary statute where Congress has waived the United States' immunity. See, e.g., Jayvee Brand, Inc. v. United States*, 721 F.2d 385 (D.C. Cir. 1983) (Bork, J.).

[138] For example, in *Bartlett v. Bowen*, 816 F.2d 695 (D.C. Cir. 1987), Judge Bork argued that the government had not waived sovereign immunity with respect to a First Amendment challenge to the administration of a thee federal Medicare program. *See also Brown v. United States*, 742 F.2d 1498 (D.C. Cir. 1984) (en banc) (rejecting Judge Bork's dissenting view that a local ordinance barring damages claims by inmates also barred any claim seeking to vindicate constitutional rights).

[139] *E.g., Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774; (D.C. Cir. 1984) *Persinger v. Islamic Republic of Iran*, 729 F.2d 835 (D.C. Cir. 1984). Both cases are discussed more fully in the section that follows on Executive Power.

[140] *Nader v. Block*, 366 F. Supp. 104 (D.D.C. 1973).

[141] 28 U.S.C. §§ 591-8 (1978).

[142] *Hearings on the Special Prosecutor before the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. 451 (1973).

[143] *Nominations of William B. Saxbe to be Attorney General: Hearings Before the Sen. Comm. on the Judiciary*, 93d Cong., 1st Sess. 92 (1973).

[144] Bork, *Comments on Legality of United States Action in Cambodia*, 65 Am. J. Int'l. L., at 79 (1971) (emphasis added).

[145] During his confirmation hearings as Solicitor General, Bork responded to questions about *how* Congress could constitutionally act to end the war in Southeast Asia. Bork responded that he had "not studied the question of the particular form your efforts take . . .," reciting the general principle that "the ultimate power of war and peace resides in the Congress." *Nominations of Joseph T. Sneed to be Deputy Attorney General and Robert H. Bork to be Solicitor General: Hearings before the Senate Comm. on the Judiciary, supra*, at 9-10.

[146] *Foreign Intelligence Surveillance Act: Hearings on H.R. 7308 Before the Subcomm. on Courts and Civil Liberties of the House Comm. on the Judiciary*, 95th Cong., 2d Sess. 130, at 134 (1978). Bork also argued that federal courts have no jurisdiction under Article III to issue warrants in this area, although they routinely do so in criminal matters. Moreover, Bork argued that judges should not even ensure that surveillance complies with constitutional standards. *Id.* According to Bork, abuse by intelligence agencies is not a realistic concern: "The possibility of future abuses has been greatly lessened because of [the] exposure [of past abuses]. We have established a new set of expectations, a new tradition, about how we want our intelligence agencies to behave." *Id.* at 132.

[147] The legislators claimed that the President had violated the War Powers Resolution, 50 U.S.C. §§ 1541-48 (1976), and the War Powers Clause of the Constitution by introducing military officals into situations "where imminent involvement in hostilities is clearly indicated by the circumstances." *Crockett v. Reagan*, 720 F.2d at 1355.

[148] 785 F.2d 1043, 1075 (D.C. Cir.) (Bork, J., dissenting) *cert. granted*, 107 S. Ct. (1986).

[149] 785 F.2d at 1076.

[150] 726 F.2d 774 (D.C. Cir. 1984).

[151] 729 F.2d 835 (D.C. Cir. 1984).

[152] 28 U.S.C. § 1603(c).

[153] 729 F.2d 839.

[154] 793 F.2d 304 (D.C. Cir. 1986) (denial of rehearing *en banc*) (Bork, J., dissenting).

[155] 697 F.2d at 114. *See also Meeropol v. Meese*, 790 F.2d 942 (D.C. Cir. 1986) (Bork, J.) (declining to order additional discovery against the F.B.I. based on a sampling of one percent of the pages withheld). Judge Bork also insulates corporate and commercial activity from public scrutiny. *E.g., Greenberg v. Food and Drug Administration*, 803 F.2d 1213 (D.C. Cir. 1986) (dissenting from denial of summary judgment to bar disclosure to publication group of list of health care facilities owning CAT scanner manufactured by particular company).

[156] *Wolfe v. Department of Health and Human Services*, 815 F.2d 1527, 1538 (D.C. Cir. 1987), *ren'g en banc granted*, —— F.2d —— (July 2, 1987) (Bork, J. dissenting). Faced with a request for disclosure of an agency log that recorded the progress of topics considered for regulation, Judge Bork argued that the agency's deliberative process would be seriously harmed by disclosure. Judge Bork contended that the agency had a right to conduct its deliberations, prior to publication of a decision in the *Federal Register*, free and clear of public scrutiny and without being lobbied by interest groups.

[157] *Id.* For a full discussion of Executive privilege, *see* R. Berger, *Executive Privilege* (1975); Dorsen & Shattuck, *Executive Privilege, Congress and the Courts*, 34 Ohio St. L.J. 1 (1974).

[158] *Id.* at 1539.

[159] *Id.* at 1533.

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON OPPOSITION TO THE NOMINATION OF ROBERT H. BORK TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AUGUST 17, 1987

The AFL-CIO opposes the nomination of Judge Robert H. Bork to be an Associate Justice of the Supreme Court of the United States. We call on the Senate to use its independent "advice and consent" powers to reject that nomination.

It is an open secret that the President is intent on perpetuating the "Reagan revolution's" social and political program beyond his term of office by putting the courts, including the Supreme Court, in the hands of judges whose first fealty is to that program. It is the Senate's right and responsibility to stand up to this ideological court packing and to insist on a Supreme Court nominee steeped in the richer, more complex, more diverse and more humane body of rules, practices and understandings that have historically been recognized to constitute the law.

Our review of Judge Bork's academic work and his public career make it plain that he is a man moved not by deference to the democratic process, nor by an allegiance to any recognized theory of jurisprudence, but by an overriding commitment to the interests of the wealthy and powerful in our society. His agenda is the agenda of the right wing and he has given a lifetime of zeal to publicizing that agenda; that is the stuff from which his nomination was made and that is what requires the Senate to refuse its advice and consent.

Over the past three decades Judge Bork has opposed a variety of initiatives, whether legislative or judicial, to extend social, economic, political, and legal rights more broadly and equitably. So far as we have been able to ascertain, he has never shown the least concern for working people, minorities, the poor, or for individuals seeking the protection of the law to vindicate their political and civil rights. The causes that have engaged him are those of businessmen, of property owners and of the executive branch of government.

Judge Bork's academic work on the Constitution purports to be in praise of "judicial restraint" and "neutral principles," but his work as a whole makes it clear that these phrases are used merely as literary counterpoint to the invective in which he condemns "liberal judges" who allegedly decide cases out of "partisanship," "activism" and reliance on "their personal political values."

The decisions he derides include many of the landmarks guaranteeing civil liberties, racial justice and equal treatment under law: decisions providing for "one man one vote"; outlawing the poll tax; upholding Congress' broad powers to enforce the Fourteenth Amendment; enunciating the "clear and present danger" test to safeguard free speech; and outlawing exclusionary racial covenants. These are not the excesses of judicial imperialists but rather conscientious efforts to plumb the deepest values of the Constitution and to move, in a measured way, toward the realization of its grand plan.

In contrast, we have not found in Judge Bork's writings even a whisper of disapproval of any Supreme Court decision in the last fifty years taking a limited view of individual rights or a broad view of government power, or any suggestion that right-wing judges have ever improperly relied on their personal values in construing statutes or in fashioning constitutional principles. Nothing in logic or experience supports the notion that judges who share Judge Bork's political and social views have been so consistent in their devotion to disinterested reason; and, not surprisingly, the arguments Judge Bork makes do not support his contention that the modern decisions upholding individual rights he attacks are wholly without legal support.

The Constitution is a complex and subtle document phrased in the general terms required in a charter of government meant to endure. The Supreme Court's interpretative efforts are necessarily imperfect and reasoned criticism of those efforts is a purifying force in the evolution of constitutional law. But Judge Bork's polemics, his litany of complaints that the decisions with which he disagrees are the product of willful efforts to distort, have precisely the opposite effect.

Aside from seeking to drain the Bill of Rights of most of its force, Judge Bork has concentrated his energies on attempting to liberate big business from most of the limits on corporate power stated in the antitrust laws. In pursuit of this goal, and in order to further his personal belief in the virtues of Chicago-school economic theory, he is an extreme judicial activist, ready and willing to jump all the hurdles put in his way by legislative enactments and dozens of long standing judicial precedents.

Judge Bork's "dedication" to judicial restraint also disappears where the issue is executive power. With only vague "separation of powers" concepts to rely on he has been quick to condemn both legislative and judicial checks on the Executive branch. That approach cannot be squared with his approach to individual rights cases, where he argues that only the clearest constitutional mandate can ever justify invalidating a legislative act.

Judge Bork's five year record on the federal bench has been characterized by the same tendency to subordinate principle to partisan preference. As the *Columbia Law Review* noted, his record in non-unanimous

decisions in which he participated—in those close cases in which there almost surely was no binding precedent to foreclose the exercise of independent judgment—is far to the right of other Reagan-appointed judges. His actions in those cases, said that Review, display a "one-sided approach to . . . the principles of restraint he espouses," since he voted "consistently in favor of business groups' claims against federal agencies yet opposed most claims by public interest groups." And in non-unanimous constitutional cases the pattern is the same: claims that are not based on property rights rarely won Judge Bork's support while claims of executive authority—whether challenged by Congress or individuals—rarely lost his vote.

President Reagan has justified his choice by arguing that Judge Bork's accomplishments make him a logical successor to Justice Frankfurter. That is a comparison with special meaning to the trade union movement. Felix Frankfurter was a strong and early friend of labor who had worked to expose the evils of the labor injunction, to frame the New Deal and to forward the cause of civil liberties before going on the bench. Yet, once on the Supreme Court, Justice Frankfurter, out of respect for the democratic branches of government, took a relatively narrow view of the Court's authority to invalidate legislation on constitutional grounds and showed a scrupulous regard for following congressional intent in cases involving federal statutes.

Justice Frankfurter's career makes it plain that restraint in the exercise of judicial authority is no vice. Organized labor is committed to making its way by mobilizing the energies of its members and by making their presence felt in the economic, political and legislative processes. We are well aware of the dangers of personal political and social bias in judicial decision-making; we recognize that judges who strive to transcend their parochial limits are the judges who meet the obligation of their office.

Judge Bork is not in the Frankfurter tradition. Justice Frankfurter referred to constitutional adjudication as a process calling for "statecraft," calling, in other words, for a justice able to look beyond his personal predilections and to comprehend the wide range of legitimate interests reflected in the law.

Judge Bork has demonstrated no capacity for statecraft. His skill is the pamphleteer's skill of reducing complex questions to caricatures and of belittling the honor and integrity of his intellectual opponents. His place is on the lawyers' side of the bar openly arguing for the privileged who have been the beneficiaries of his endeavors all along.

For these reasons the AFL-CIO opposes his nomination to the Supreme Court and urges the Senate to refuse its "advice and consent."

THE JUDICIAL RECORD OF JUDGE ROBERT H. BORK

(Public Citizen Litigation Group: Arthur L. Fox II, Eric R. Glitzenstein, Patti A. Goldman, Cornish F. Hitchcock, Paul Alan Levy, Joan S. Meier, Katherine A. Meyer, Alan B. Morrison, William B. Schultz, and David C. Vladeck)

INTRODUCTION

On July 1, 1987, President Reagan nominated Judge Robert H. Bork to be an Associate Justice of the Supreme Court of the United States. The nomination was instantly controversial because in recent years the man Judge Bork would replace—Associate Justice Lewis F. Powell, Jr.—has been the swing vote in many 5-4 cases.

Both his supporters and opponents have argued that Judge Bork should be evaluated on the basis of his record. An important source of data is Judge Bork's performance as a member of the United States Court of Appeals for the District of Columbia Circuit, popularly known as the "D.C. Circuit." Many legal observers consider this court to be second only to the Supreme Court in terms of influence, primarily because it hears a large number of important cases involving the federal government that can affect people across the nation.

Judge Bork has served on the D.C. Circuit for over five years. Prior to his nomination, he had participated in approximately 400 cases in which there were published opinions, and he had written 144 majority, concurring and dissenting opinions. Shortly after the nomination was announced, the Public Citizen Litigation Group undertook a detailed examination of these cases.

The Public Citizen Litigation Group lawyers were aware of Judge Bork's decisions in cases involving their own clients and knew that in cases involving public interest organizations and government, Judge Bork had regularly sided with the executive branch.[1] Recognizing, of course, that this experience was not necessarily an accurate reflection of his overall record, we undertook a study of all his pre-nomination cases, to discern if any common themes or trends could be identified.

This analysis focuses on Bork's role in those cases where the judges disagreed with each other. We identified 56 "split decisions" in which Judge Bork particiapted—those cases in which one or more judges disagreed with the majority on how the case should be resolved and filed a dissenting statement. Judge Bork's votes in split decisions are significant for several reasons. First, it is likely that these votes made a difference in the outcome. In addition, although most D.C. Circuit cases are decided by a unanimous three-judge panel, the cases in which judges disagree publicly tend to be the more controversial cases, some of which will ultimately reach the Supreme Court for resolution. Finally, these are the "tough cases" because by definition split decisions are cases in which at least one judge disagreed with Judge Bork.

A. SUMMARY OF FINDINGS

An analysis of Judge Bork's record on the D.C. Circuit demonstrates that:

Judge Bork's performance on the D.C. Circuit is not explained by the consistent application of judicial restraint or any other judicial philosophy; instead in split cases, one can predict his vote with almost complete accuracy simply by identifying the parties in the case;

In split cases where the government is a party, Judge Bork voted against consumers, environmental groups, and workers almost 100% of the time and for business in every such case;

In 14 split cases, Judge Bork denied access to the courthouse every time; among the many losers was the United States Senate, which, according to Judge Bork's dissent, could not bring a case of major constitutional significance to the federal courts;

Judge Bork has expressed a desire to reformulate broad areas of antitrust law, and to narrow the constitutional protections of individuals;

Judge Bork is far less a friend of the First Amendment than some have suggested, as evidenced by four cases in which he voted against the First Amendment claims of political demonstrators;

On several occasions, Judge Bork's colleagues have been extremely critical of him for misinterpreting Supreme Court precedent and going beyond the facts of a particular case.

Judge Bork is widely credited as being a proponent of judicial restraint, a judicial philosophy that in administrative law cases requires courts to defer to the executive branch. Our analysis of his decisions, however, found that Judge Bork generally adhered to this philosophy only in cases brought by individuals or organizations other than a business (referred to as "non-business cases").

In the field of administrative law, Judge Bork adhered to an extreme form of judicial restraint if the case was brought by public interest organizations. His vote favored the executive in every one of the 7 split decisions in which public interest organizations challenged regulations issued by federal agencies. These cases included environmental issues, the regulation of potentially carcinogenic colors in foods, drugs, and cosmetics, the regulation of television and radio licensees, and a requirement that family planning clinics notify parents of teenage girls who sought birth control information and devices. The single non-business general regulatory issue on which Judge Bork voted in favor of the individual involved challenges by President Reagan and Senator Kennedy to a decision of the Federal Election Commission regarding the treatment of campaign expenses.[2]

Judge Bork also deferred to the executive branch in labor cases brought to benefit employees, where he voted for the government in 4 out of 5 cases in which the court split.[3] And in cases brought under the Freedom of Information Act ("FOIA") and related statutes, he voted for the agency and against the requester in all 7 of the cases in which the court split, even though Congress has made it clear in the statute that no deference is to be accorded the executive branch agencies in those cases.

In the areas of constitutional law, the doctrine of judicial restraint has a similar meaning: it requires judges to be reluctant to find new rights in the Constitution or to expand existing ones. Once again, in civil rights and civil liberties cases brought by individuals, Judge Bork adhered to this philosophy. In the 6 split decisions where the government was a party, he voted against the individual every time. The pattern in criminal cases was the same; Judge Bork voted for the prosecution in the 2 split criminal decisions. Indeed, he voted against the criminal defendant in 23 of the 24 criminal cases in which he participated on the D.C. Circuit.

A summary of Judge Bork's votes in split decisions involving the federal government

[1] A list of the Public Citizen Litigation Group cases in which Judge Bork has participated appears in the Appendix.

[2] None of the cases were brought by the "conservative" public interest organizations such as the Heritage Foundation.

[3] In the single vote that favored employees' interests, Judge Bork voted to remand that case to the Merit Systems Protection Board after upholding a worker's discharge on the merits, so that the agency could explain its reasons for a strictly procedural ruling in favor of the executive.

and a party other than a business appears below:

JUDGE BORK'S VOTES IN SPLIT DECISIONS IN CASES AGAINST THE EXECUTIVE NOT BROUGHT BY BUSINESS

	Private party [1]	Executive
Administrative Law:		
General regulatory cases	1	7
Labor cases	1	4
Freedom of information cases	0	7
Constitutional law	0	6
Criminal law	0	2
Total	2	26

[1] Public interest group, worker, individual, FOIA requester, candidate.

However, Judge Bork did not consistently adhere to the principles of judicial restraint. To the contrary, when a private corporation or business group (referred to as a "business interest") sued the government, he was a judicial activist. Thus, in the 8 split decisions where a business interest challenged the government, Judge Bork voted for the business every time. Five of these are ratemaking cases where the court's decisions directly affected the cost of services provided to consumers, and 3 are labor cases in which the losers were workers. The other victory by a business interest reversed the Department of Agriculture's so-called "junk food rule," which prohibited the sale of soft drinks and other products in competition with nutritious meals being served in school lunch programs.

Judge Bork's votes in split administrative law cases in which a business interest was a party appear in the table below:

JUDGE BORK'S VOTES IN SPLIT DECISIONS IN ADMINISTRATIVE LAW CASES BROUGHT BY BUSINESS

	Business	Executive
Federal Energy Regulatory Commission, Interstate Commerce Commission, Department of Agriculture cases	5	0
Labor cases	3	0
Total	8	0

The only split case in which a business interest asserted a constitutional right is *Jersey Central Power & Light Co.* v. *FERC,* 768 F.2d 1500 (1985) and 810 F.2d 1168 (1987) (*en banc*), which also raised administrative law issues. Judge Bork's opinions in favor of Jersey Central in this case, as well as his position in several other cases, suggest that he is much more willing to find a constitutional violation where business is asserting a property interest, such as a taking of property without just compensation, than when individuals are seeking constitutional protection for their non-economic rights.

Not only did Judge Bork consistently rule against individuals and public interest organizations on the merits, but in many cases he did not even let them through the courthouse door. Thus, in the 14 split cases involving questions of access to the courts or to administrative agencies, Judge Bork voted against granting access on every occasion. He voted to dismiss cases against prison inmates, social security claimants, Haitian refugees, handicapped citizens, the Iranian hostages, and the homeless. Judge Bork did not reach the merits in any of these cases; rather, he refused to decide the claims raised. And in one case, he affirmed a decision of the Nuclear Regulatory Commission denying the Attorney General of Massachusetts an opportunity to participate in a proceeding concerning the safety of a nuclear power plant in Massachusetts.

The most significant expression of Judge Bork's views on access are contained in his dissent in *Barnes* v. *Kline,* 759 F.2d 21 (1985). There Judge Bork voted to preclude the United States Senate, the House of Representatives, and 33 Members of Congress from litigating an issue of major constitutional importance (whether the President had effectively exercised the pocket veto), even though the President's attorney had conceded that the plaintiffs could sue. According to Judge Bork, the courts are not available to resolve major constitutional controversies between the President and Congress; instead, those issues must be decided in the political arena.

Judge Bork's opinions in *Barnes* and other standing cases strongly suggest that, if he were on the Supreme Court, he would vote to deny standing in a large variety of cases challenging executive action, including many cases brought by public interest organizations. Because his theory of standing is grounded on his own interpretation of Article III of the Constitution, only a constitutional amendment could alter the result. A summary of Judge Bork's votes on access cases appears below:

Judge Bork's votes in split decisions in cases involving access to the courts

Granted access	0
Denied access	14

Taken together, Judge Bork's decisions in the fields of administrative, constitutional, and criminal law and his rulings on access present a clear theme: where anybody but a business interest challenged executive action, Judge Bork exercised judicial restraint either by refusing to decide the case or by deferring to the executive on the merits. However, when business interests challenged executive action on statutory or constitutional grounds, Judge Bork was a judicial activist, favoring the business interest in every split decision in which he participated. In summary, when split cases in which Judge Bork participated during his five years on the D.C. Circuit are combined, on 48 out of 50 occasions (or 96% of the time) Judge Bork voted to deny access, voted against the claims of individuals who had sued the government, or voted in favor of the claims of business which sued the government.

NATIONAL WOMEN'S LAW CENTER REPORT DOCUMENTS JUDGE BORK'S VIEWS ON WOMEN'S LEGAL RIGHTS

Following the nomination of Judge Robert Bork to the Supreme Court, the National Women's Law Center undertook a review of his legal opinions, writings, and statements bearing on the rights of women. We have now released our 39-page report, *Setting the Record Straight: Judge Bork and the Future of Women's Rights.* A copy of the report's Executive Summary is attached.

Setting the Record Straight concludes that Judge Bork advocates legal views that are hostile to women's interests in critical areas, including their constitutional rights to equal protection and to privacy, and important statutory protections. Moreover, our findings show that he is a judicial activist who supports reversing many Supreme Court decisions that establish key rights of women, and who seizes every opportunity to advance his positions.

Copies of *Setting the Record Straight* are available for $5 each from the National Women's Law Center, 1616 P Street, N.W., Suite 100, Washington, D.C. 20036. If time allows, we hope that you will publicize this report in a newsletter or other appropriate mailing. For further information, please contact the Center.

SETTING THE RECORD STRAIGHT: JUDGE BORK AND THE FUTURE OF WOMEN'S RIGHTS

Following the nomination of Judge Bork to the Supreme Court, the National Women's Law Center undertook a review of his court decisions, writings and statements that bear on the legal rights of women. Judge Bork has stated that the courts are ill-suited to address problems of sex discrimination. His record reflects that view, both in the approach he has articulated for interpreting the law, and his actual court decisions.

Judge Bork strongly disagrees with Supreme Court cases interpreting the constitutional rights to equal protection and privacy that form the cornerstone legal protections for women. Judge Bork also has interpreted statutes narrowly that afford women critical protections in the areas of employment and health. Finally, Judge Bork is a judicial activist who supports overturning the Supreme Court precedents affecting women's rights, which he believes are wrongly decided, and who as a judge has seized unusual opportunities to advance his positions.

In Judge Bork's view, the Constitution provides no specific protections for women except for suffrage. Women would be left defenseless against government discrimination under his interpretation of the Constitution.

1. Judge Bork believes that the fourteenth amendment equal protection clause is designed to eliminate only discrimination on the basis of race. His theory that the Constitution and its amendments must be interpreted according to their historical context precludes any specific fourteenth amendment protection against sex discrimination.

Instead of the courts giving careful, or "heightened," scrutiny to governmental policies that treat men and women differently, as the Supreme Court has required since 1971, Judge Bork would return to the old standard that any "rational" basis is reason enough to justify discrimination. All claims of illegal sex discrimination considered under the rational basis standard have been rejected by the Supreme Court.

A long line of Supreme Court cases beginning in 1971 used a new "heightened scrutiny" test to invalidate government-sponsored sex discrimination. Cases that would be overturned by Judge Bork's reasoning include: State's automatic preference for males over females to serve as executor of estates held invalid [*Reed* v. *Reed* (1971)]; stricter requirements for servicewomen than servicemen to claim dependents held invalid [*Frontiero* v. *Richardson* (1973)]; different Social Security benefits for women and men held invalid [*Weinberger* v. *Wiesenfeld* (1975); *Califano* v. *Goldfarb* (1977)]; State statute obligating parent to support sons to an older age than daughters held invalid [*Stanton* v. *Stanton* (1975)]; and State statute giving husbands exclusive authority to manage community property jointly owned by the husband and wife held invalid [*Kirchberg* v. *Feenstra* (1981)].

2. Judge Bork believes that there is no constitutionally-protected right to privacy. In his view, the framers of the Constitution did not envision such a right, and therefore landmark Supreme Court cases based on the right to privacy over the last fifty years were wrongly decided.

Judge Bork disagrees with Supreme Court cases that have carved out a sphere of familial privacy and integrity with which the government cannot constitutionally interfere, and would decide them differently. Cases that would be overturned include: State prohibition against teaching of modern foreign languages violates fundamental rights of parents to control their children's education [*Meyer* v. *Nebraska* (1923)]; State law requiring children to attend public schools unreasonably inteferes with parents' right to direct the education of their children [*Pierce* v. *Society of Sisters* (1925)]; and school board requirements that pregnant teachers resign at a fixed time early in pregnancy held invalid [*Cleveland Bd. of Educ.* v. *LaFleur* (1974)].

In a court of appeals case, Judge Bork wrote a separate statement that described the right asserted by a noncustodial father to discover the location of his children as "tenuous" and unworthy of constitutional protection [*Franz.* v. *United States* (1983)].

Judge Bork disagrees with Supreme Court cases that have protected access to contraception and abortion on the basis of a constitutional right to privacy, and would reverse cases that include: State law prohibiting the sale or use of contraceptives, even by married couples, held invalid [*Griswold* v. *Connecticut* (1065)]; and State law prohibiting access to abortion held invalid [*Roe* v. *Wade* (1973)].

Judge Bork's narrow interpretation of the Constitution is mirrored by his narrow interpretation of statutes designed to protect women.

1. In the area of employment, Judge Bork has advocated legal positions that would seriously narrow women's statutory protections—protections that have been confirmed by the Supreme Court.

In *Vinson* v. *Taylor* (1985) (op. dissenting from denial of rehearing), Judge Bork questioned whether job-related sexual harassment should be sex discrimination prohibited at all by Title VII of the 1964 Civil Rights Act. In this case, Judge Bork also stated that sexual harassment cases should be harder to prove and subject to different standards than other Title VII discrimination cases.

In a unanimous opinion, written by now Chief Judge Rehnquist, the Supreme Court rejected Judge Bork's reasoning, and held not only that sexual harassment was a violation of Title VII, but that the severe standards of proof Judge Bork would impose were not appropriate.

Judge Bork has expressed the view that the legal theory underlying affirmative action remedies to overcome the effects of past governmental discrimination is wrong.

In contrast to Judge Bork's view, last term in *Johnson* v. *Department of Transportation*, the Supreme Court affirmed the validity and importance of affirmative action to provide women access to highly paid jobs from which they had been excluded in the past.

2. In the area of health, Judge Bork has analyzed statutes inconsistenty, finding no Congressional authority to protect women's health in one statute, while reaching to find Congressional authority to allow restrictions on access to contraceptives in another.

In *Oil, Chemical & Atomic Workers Int'l Union* v. *American Cyanamid Co.* (1984), Judge Bork held that despite the language of the Occupational Safety and Health Act, which he conceded arguably applied, an employer would not violate the Act by having a policy that required female employees to become surgically sterilized in order to keep their jobs.

In *Planned Parenthood* v. *Heckler (1983)*, Judge Bork adopted a very different approach. In a case holding that Congress did not authorize the Department of Health and Human Services (HHS) to require a parental notification rule covering family planning grantees, Judge Bork conceded that the rule was invalid. But he further stated that the case should be remanded to HHS, and developed a theory under which, in his view, HHS could lawfully reissue the rule.

Judge Bork has stated his belief that "mistaken" Supreme Court decisions should not be followed in future cases; has indicated a belief that the Supreme Court cases upon which fundamental rights of women are based are mistaken; and has a record demonstrating that he would actively seek to implement his views.

1. Judge Bork has stated that justices should freely correct prior Supreme Court decisions, unless precedents are so fixed, as under the Commerce Clause, that they should not be overruled.

Judge Bork has given every indication that precedents based on the rights to privacy and heightened protection for women under the equal protection clause should be changed.

Judge Bork has described as unconstitutional or unprincipled the application of the equal protection clause to "non-racial inequalities;" the *Griswold* decision allowing the sale and use of contraceptives; and the *Roe* v. *Wade* decision upholding a woman's right to abortion.

2. While on the Court of Appeals, Judge Bork has taken unusual steps to advance his views.

Although bound by Supreme Court precedent finding a constitutional right to privacy, in an opinion addressing the employment rights of homosexuals in the Armed Forces, he included a review of his general position on the right to privacy and his opinion of the correctness of Supreme Court precedents [*Dronenburg* v. *Zech* (1984)].

In a sexual harassment case, he filed a "separate statement" seeking to limit the reach of an opinion by a panel of which he was not a member, even though rehearing was denied [*King* v. *Palmer* (1985)].

In a case involving privacy rights asserted by a father seeking access to his children, in which he was a member of the panel, Judge Bork filed a statement attacking the constitutional rights afforded the father by the majority, not when the opinion was issued but more than a month later [*Franz* v. *United States* (1983)].

In sum, Judge Bork's record is one of a judicial activist, whose views place him outside the mainstream of jurisprudential thought. These views, if implemented by the Supreme Court, would have profound consequences for the legal rights of women.

BORK'S VOTING RECORD FAR MORE CONSERVATIVE THAN THAT OF THE AVERAGE REAGAN JUDGE, NEW STUDY REVEALS

Supreme Court nominee Robert Bork, in a series of contentious cases as an appellate court judge, voted on the conservative side over 90% of the time—making him far more conservative than the average Reagan appointee to the U.S. Court of Appeals, an objective study has concluded.

The year-long study, about to be published in the Columbia Law Review, examined all of the over 1200 nonunanimous decisions by the U.S. Courts of Appeals during 1985 and 1986. This summer, co-authors Timothy Tomasi and Jess Velona conducted additional research to incorporate all of Judge Bork's votes in nonunanimous cases since his appointment to a federal judgeship by President Reagan in 1982.

Overall, the results were that Reagan judges, while much more conservative than Democratic judges, were no more conservative than judges appointed by previous Republican presidents. Democratic judges voted on the liberal side of cases, such as for civil rights plaintiffs, criminal defendants and public interest groups and against business, 62% of the time. Reagan judges did so only 31% of the time, but other GOP judges voted on the liberal side at the same rate—31%. Reagan judges were especially hostile to the claims of criminal defendants, minorities and the disabled, but so were other Republican judges.

Judge Bork did not at all fit this pattern, however. In 18 nonunanimous cases during 1985–86, he never voted on the liberal side. Moreover, since 1982, he cast liberal votes in but 4 of 42 such cases—a rate of just 10%. Many of these were government regulation cases, in which Bork voted consistently in favor of business groups' claims against federal agencies (7 of 8 cases) yet opposed most claims by public interest groups (14 of 15 cases). Thus, he voted on the liberal side of regulation cases only twice in 23 cases studied, only 9% of the time, and far less than the 42% rate of other Reagan judges.

The study also tested whether Reagan judges, when disagreeing with Democratic appointees, took the liberal side of the case more often than did other GOP judges in such situations. Once again, no differences emerged—both Reagan judges and other GOP appointees cast liberal votes 24% of the time. When Judge Bork disagreed with Democrats, however, he never voted on the liberal side in 15 cases during 1985–86, and he did so just twice in 37 cases since 1982—only 5% of the time.

"It is surprising that Reagan judges on the average were no more conservative in their voting behavior than other GOP judges," said Mr. Velona, Articles and Book Reviews Editor of the Columbia Law Review. "If any group of judges would be ideologues, Reagan's appointees fit the bill. But that just hasn't happened."

"As for Judge Bork, people all too often focus solely on his own record and conclude that he is very conservative," said Mr. Tomasi, Notes and Comments Editor of the Law Review. "But the next question is, conservative compared to whom? Our study provides such a unique baseline by examining the voting records of other Republican appointees. Even though the number of cases involving Judge Bork was relatively small, the wide gap between his voting behavior and those of his Republican colleagues cannot be ignored."

"Most strikingly," Velona and Tomasi added, "Judge Bork's voting behavior in regulation cases reflects an apparently inconsistent application of judicial restraint. In the cases with dissents examined in our study, Bork consistently urged that the court defer to agency decisions when a public interest group sued the government. However, in our study, when a business group sued a government agency, Bork very often voted to reverse the agency's decision."

"Of course, the Senate must consider more than these voting patterns in evaluating a judicial nominee," Velona and Tomasi

concluded. "We urge that Judge Bork's public statements, academic writings and judicial opinions be closely scrutinized. Still, Judge Bork will need to explain what we have identified as an apparently one-sided approach in at least a significant portion of his judicial decisions. The average Reagan judge may be within the Republican mainstream, but the President's nomination of a man with Judge Bork's record to the nation's highest court can only fuel the current debate about judicial extremism."

[From the New York Review of Books, Aug. 13, 1987]

THE BORK NOMINATION

(By Ronald Dworkin)

President Reagan's nomination of Judge Robert Bork to succeed Justice Lewis Powell on the Supreme Court presents the Senate with an unusual problem. For Bork's views do not lie within the scope of the longstanding debate between liberals and conservatives about the proper role of the Supreme Court. Bork is a constitutional radical who rejects a requirement of the rule of law that all sides in that debate had previously accepted. He rejects the view that the Supreme Court must test its interpretations of the Constitution against the principles latent in its own past decisions as well as other aspects of the nation's constitutional history. He regards central parts of settled constitutional doctrine as mistakes now open to repeal by a right-wing court; and conservative as well as liberal senators should be troubled by the fact that, as I shall argue here, he has so far offered no coherent justifications for this radical, antilegal position.

It would be improper for senators to reject a prospective justice just because they disagreed with his or her detailed views about constitutional issues. But the Senate does have a constitutional responsibility in the process of Supreme Court appointments, beyond insuring that a nominee is not a crook or a fool. The Constitution is a tradition as well as a document, and the Senate must satisfy itself that a nominee intends in good faith to join and help to interpret that tradition in a lawyerlike way, not to challenge and replace it out of some radical political vision that legal argument can never touch.

The Senate's responsibility is particularly great in the circumstances of the Bork nomination. Bork is the third justice added to the Court by an administration that has for seven years conducted an open and inflexible campaign of ideological appointments on all levels of the federal courts, hoping to make them a seat of right-wing power long after the administration ends. Reagan made no effort to disguise the political character of Bork's appointment: he said that Bork is "widely regarded as the most prominent and intellectually powerful advocate of judicial restraint," and that he "shares my view" of the proper role of the Court. Conservative pressure groups are already raising money to support the nomination, and the right-wing New York *Post* has challenged liberals to "make our day" by opposing it.

Bork's appointment, if confirmed, promises to achieve the dominance of the right on the Supreme Court that Reagan's previous appointments failed to secure. For Justice Powell has been a swing vote, siding mainly with the right on issues of criminal law but with more liberal justices on other issues of individual rights, and he has provided the fifth and conclusive vote, one way or the other, on many occasions. If Bork votes as those who support him have every reason to expect he will, the Court will have lost the balance that Powell provided, and it will have lost the opportunity for cases to be decided one by one on the issues, rather than on some simple ideological test. So the Senate should not apply the relaxed standards it does when a president seeks merely to have his own constitutional philosophy represented on the Supreme Court. The Bork nomination is the climactic stage of a very different presidential ambition: to freeze that institution, for as long as possible, into an orthodoxy of the president's own design.

Few nominees, moreover, have so clearly and definitively announced their positions on matters they are likely to face if confirmed. Bork has declared, for example, that the Supreme Court's decision in *Roe* v. *Wade*, which limited a state's power to make abortion criminal, was itself "unconstitutional," that the Constitution plainly recognizes the propriety of the death penalty, and that the Court's long string of decisions implementing the "one man, one vote" principle in national and local elections was seriously mistaken. He has called the suggestion that moral minorities such as homosexuals might have constitutional rights against discrimination legally absurd, and has doubted the wisdom of the constitutional rule that the police may not use illegally obtained evidence in a criminal trial. In a dissenting opinion on the Circuit Court, which the majority said contradicted strong Supreme Court precedent, he said that Congress cannot challenge in court the constitutionality of the president's acts.

The New York Times reports White House officials as confident, moreover, that Bork will support the administration's extreme position against affirmative action, which the Supreme Court has rejected in several close votes. And Bork has strongly suggested that he would be ready, as a justice, to reverse past Supreme Court decisions he disapproved of. ("The Court," he said, "ought to be always open to rethinking constitutional problems.") Nominees often decline to answer senators' detailed questions about their views on particular issues, out of a fear that public announcement would jeopardize their freedom of decision later. But Bork has given his own extreme views such publicity that senators need not scruple to ask him to defend them.

Most commentators have assumed that Bork has a well-worked-out constitutional theory, one that is evident and straightforward, though very conservative. The Constitution has nothing in it, Bork says, except what the "framers"—"those who drafted, proposed and ratified its provisions and various amendments"—put there. When a case requires the justices to fix the meaning of an abstract constitutional proposition, such as the requirement of the Fourteenth Amendment that government not deny any person "equal protection" of the law, they should, according to Bork, be guided by the intention of the framers, and nothing more. If they go beyond what the framers intended, then they are relying on "moral precepts" and "abstract philosophy," and therefore acting as judicial tyrants, usurping authority that belongs to the people. That, Bork believes, is exactly what the Supreme Court did when it decided the abortion case, the one-man-one-vote cases, the death penalty and affirmative action cases, and the other cases of which he disapproves.

Is that an adequate theoretical explanation of his radical constitutional positions? The idea that the Constitution should be limited to the intentions of the framers has been very popular among right-wing lawyers since Attorney General Meese proclaimed it the official jurisprudence of the Reagan administration. It has been widely criticized, in familiar arguments that neither Bork nor any member of the administration has answered.[1] I shall not pursue those arguments in this article, however, because I am interested, as I said, in a different issue: not whether Bork has a persuasive or plausible constitutional philosophy, but whether he has any constitutional philosophy at all.

In order to explain my doubts I must describe, in some detail, the way Bork actually uses the idea of original intention in his legal arguments. He offered his most elaborate account of that idea in an article written many years ago, discussing the Supreme Court's famous decision in *Brown* v. *Board of Education*, which used the equal protection clause to declare racial segregation of public schools unconstitutional.[2] The *Brown* case is a potential embarrassment to any theory that emphasizes the importance of the framers' intentions. For there is no evidence that any substantial number of the congressmen who proposed the Fourteenth Amendment thought or hoped that it would be understood as making racially segregated education illegal. In fact, there is the strongest possible evidence to the contrary. The floor manager of the bill that preceeded the amendment told the House of Representatives that "civil rights do not mean that all children shall attend the same school," and the same Congress continued the racial segregation of the schools of the District of Columbia, which it then administered.[3]

When the Supreme Court nevertheless decided, in 1954, that the Fourteenth Amendment forbids such segregation, many distinguished constitutional scholars, including the eminent Judge Learned Hand and a distinguished law professor, Herbert Wechsler, had serious misgivings. But the decision has by now become so firmly accepted, and so widely hailed as a paradigm of constitutional statesmanship, that it acts as an informal test of constitutional theories. No theory seems acceptable that condemns that decision as a mistake. (I doubt that any Supreme Court nominee would be confirmed if he now said that he though it wrongly decided.) So Bork's discussion of *Brown* v. *Board of Education* provides a useful test of what he actually means when he says that the Supreme Court must never depart from the original intention of the framers.

Bork says that the *Brown* case was rightly decided because the original intention that judges should consult is not some set of very concrete opinions the framers might have had, about what would or would not fall within the scope of the general principle they meant to lay down, but the general principle itself. Once judges have identified the principle the framers enacted, then they must enforce it *as* a principle, according to their *own* judgment about what it requires in particular cases, even if that means applying it not only in circumstances the framers did not contemplate, but in ways they would not have approved had they been asked.

Since the framers of the Fourteenth Amendment did not believe they were making segregated schools unconstitutional, nothing less than that expansive interpretation of "original intention" could justify Brown as a decision faithful to their intent. And Bork has made it plain on many other

occasions that the expansive interpretation is what he has in mind. In a recent case in the DC Circuit Court of Appeals, for example, he joined a majority decision declaring that the First Amendment protected newspaper columnists from a libel suit brought by a Marxist political scientist after they had reported that he had no standing in his profession.[4] Bork's then colleague on that court, Antonin Scalia, who has since been promoted by Reagan to the Supreme Court, dissented, and chided Bork and the other members of the majority as being faithless to the intention of the framers of the First Amendment, who plainly did not suppose that they were changing the law of libel in the way the majority decision assumed. Bork replied, once again, by insisting that a judge's responsibility is not to the particular concrete opinions the framers might or might not have had about the scope of the First Amendment principle they created, but to that principole itself, which, in his view, required that the press be protected from libel suits in ways the framers would not have anticipated.

That seems right. If we are to accept the thesis that the Constitution is limited to what the framers intended it to be, then we must understand their intentions as large and abstract convictions of principle, not narrow opinions about particular issues. But understanding their intentions that way gives a much greater responsibility to judges than Bork's repeated claims about judicial restraint suggest. For then any description of original intention is a conclusion that must be justified not by history alone, but by some very different form of argument.

History alone might be able to show that some particular concrete opinion, like the opinion that school segregation was not unconstitutional, was widely shared within the group of legislators and others mainly responsible for a constitutional amendment. But it can never determine precisely which general principle or value it would be right to attribute to them. This is so not because we might fail to gather enough evidence, but for the more fundamental reason that people's convictions do not divide themselves neatly into general principles and concrete applications. Rather they take the form of a more complex structure of layers of generality, so that people regard most of their convictions as applications of further principles or values more general still. That means that a judge will have a choice among more or less abstract descriptions of the principle that he regards the framers as having entrusted to his safekeeping, and the actual decisions he makes, in the exercise of that responsibility, will critically depend upon which description he chooses.

I must illustrate that point in order to explain it, and again I can draw on Bork's own arguments to do so.[5] In his discussion of the *Brown* case, he proposed a particular principle of equality as the general principle judges should assign to the framers: the principle that government may not discriminate on grounds of race. But he might just as well have assigned them a more abstract and general principle still: that government ought not to discriminate against any minority when the discrimination reflects only prejudice. The equal protection clause of the Fourteenth Amendment does not, after all, mention race. It says only that government must not deny any person equal protection of the law. The Fourteenth Amendment was, of course, adopted after and in consequence of the Civil War, which was fought over slavery. But Lincoln said the war was fought to test the proposition that all men are created equal, and of course he meant women as well. In any case it would be preposterous to think that the statesmen who created the equal protection clause thought that official prejudice was offensive only in the case of race. They thought that official racial discrimination was outrageous because they held some more general principal condemning all forms of official prejudice. Indeed, their views about race would not have been moral views, which they plainly were, unless they held them in virtue of some more general principle of that sort.

Then why should judges not attempt to define and enforce that more general principle? Why should they not say that the framers enacted a principle that outlaws any form of official discrimination based on prejudice? It would follow that the equal protection clause protects women, for example, as well as blacks from discriminatory legislation. The framers apparently did not think that their principle had that range; they did not think that gender distinctions reflected stereotype or prejudice. (It took a later constitutional amendment, after all, to give women the vote.) But once we have defined the principle we attribute to the framers in that more abstract way, we must treat their views about women as misunderstandings of the force of their own principle, which time has given us the vision to correct, just as we treat their views about racially segregated education. That, in effect, is what the Supreme Court has done.[6]

But now consider the case of homosexuals. Bork called the suggestion that homosexuals are protected by the Constitution a blatant example of trying to amend that document by illegitimate fiat. But once we have stated the framers' intention as a general principle condemning all discrimination based on prejudice, then a strong case can be made that we must recognize homosexual rights against such discrimination in order to be faithful to that intention. The framers might not have agreed, even if they had examined the question. But once again a judge might well think himself forced, in all intellectual honesty, to regard that as another mistake they would have made, comparable to their mistakes about school segregation and women. Once again, as in those cases, time has given us the information and understanding that they lacked. Superstitions about homosexuality have been exposed and disproved, many states have repealed laws making homosexuals acts criminal, and those laws that remain are very widely regarded as now based on nothing but prejudice. I do not mean to claim that the argument in favor of homosexual rights would be irresistible if we accepted the broader reading of original intention that I described. But the argument would state a strong case that any opponent would have to answer in detail, not simply brush aside as Bork did.[7]

An appeal to the framers' intention, in other words, decides nothing until some choice is made about the right way to formulate that intention on any particular issue. If we choose the narrowest, most concrete formulation of original intention, which fixes on the discrete expressed opinions of the framers and ignores the more general moral vision they were trying to serve, then we must regard *Brown* as unfaithful to the framers' will; and that conclusion will seem to most people ample evidence that the most concrete formulation is the wrong one. If we assign to the framers a principle that is sufficiently general not to seem arbitrary and ad hoc, on the other hand, like the principle that government must not discriminate on grounds of prejudice, then many of the decisions Bork castigates as illegitimate become proper according to the standards Bork himself claims to endorse.

So everything depends on the level of generality a judge chooses as the appropriate one, and he must have some reason for his choice, Bork chooses a level intermediate between the two I just described. He says that judges should assign the framers a principle limited to the groups or topics they actually discussed. If race was discussed during the debate over the equal protection clause, but neither gender nor sexual behavior was "under discussion," then the original intention includes the principle that government should not discriminate racially. It does not include the more general principle that the government should not act out of prejudice against any group of citizens, because that more general principle would apply to women and homosexuals, who were not discussed. The odd suggestion that we can assign no general principle to the framers whose application would extend to any group or topic not "under discussion" would of course sharply limit the individual rights the Constitution would protect. But it is flatly inconsistent with Bork's other opinions—the framers of the First Amendment did not discuss the law of libel, for example. And it has no jurisprudential or historical merit at all.

There is no more sense in assigning the framers an intention to protect only the groups they actually mentioned than in assigning them an intention limited to the concrete applications they actually envisioned, which Bork agrees would be absurd. The framers meant to enact a moral principle of constitutional dimensions, and they used broad and abstract language appropriate to that aim. Of course they discussed only the applications of the principle that were most on their minds, but they intended their discussion to draw on the more general principle, not eviscerate it. Perhaps they disagreed among themselves about what their principle would require, beyond the issues they discussed. And contemporary judges, with more information, may think it requires legal decisions few if any of the framers anticipated, as in the case of segregated schools and gender discrimination. But Bork's suggestion insults the framers rather than respects them, because it denies that they were acting on principle at all. It reduces a constitutional vision to a set of arbitrary and isolated decrees.

Bork defends this truncated view of original intention only by appealing to the platitude that judges must choose "no level of generality higher than that which interpretation of the words, structure, and history of the Constitution fairly supports." That is certainly true, but unhelpful, unless Bork can produce an argument that his own, truncated conception meets that test; and he has not, so far as I am aware, produced even the beginning of such an argument. His conception yields narrow constitutional rules that protect only a few groups while excluding others in the same moral position. How can a discriminatory rule of that sort count as a fair interpretation of the wholly general and abstract language that the framers actually used when they referred to equal protection for all persons? Most lawyers think that the ideal of integrity of principle—that fundamental rights recog-

nized for one group extend to all—is central to the Constitution's structure. How, then, can Bork's narrow rules be recommended by any fair interpretation of that structure? Unless he can produce some genuine argument for his curtailed view of original intention, beyond the fact that it produces decisions he and his supporters approve, his constitutional philosophy is empty: not just impoverished and unattractive but not philosophy at all.

Judges in the mainstream of our constitutional practice are much more respectful of the framers' intentions, understood as a matter of principle, than Bork is. They accept the responsibility the framers imposed on them, to develop legal principles of moral breadth to protect the rights of individuals against the majority. That responsibility requires judgment and skill, but it does not give judges political license. They test competing principles in the interpretative, legal manner, by asking how far each fits the framers' decisions and helps to make sense of them, not as isolated historical events but as part of a constitutional tradition that includes the general structure of the Constitution as well as past Supreme Court and other judicial decisions. Of course competent and responsible judges disagree about the results of that exercise. Some reach mainly conservative results and others mainly liberal ones. Some, like Justice Powell, resist classification because their views are particularly sensitive to differences between different kinds of issues. Disagreement is inevitable, but the responsibility each judge accepts, of testing the principles he or she proposes in that way, disciplines their work and concentrates and deepens constitutional debate.

Bork, however, disdains these familiar methods of legal argument and analysis; he believes he has no responsibility to treat the Constitution as an integrated structure of moral and political principles, and no responsibility to respect the principles latent in past Supreme Court decisions he regrets were made.[9] In 1971 he subscribed to an alarming moral theory in an effort to explain why.[10] He said that moral opinions were simply sources of what he called "gratification," and that "there is no principled way to decide that one man's gratifications are more deserving of respect than another's, or that one form of gratification is more worthy than another." Taken at face value, that means that no one could have a principled reason for preferring the satisfactions of charity or justice, for example, to those of racism or rape.

A crude moral skeptic is an odd person to carry the colors of the moral fundamentalists. Nevertheless, if Bork is still that kind of skeptic, this would explain his legal cynicism, his indifference to whether constitutional law is coherent in principle. If not, we must look elsewhere to find political convictions that might explain his contempt for the integrity of law. His writings show no developed political philosophy, however, beyond frequent appeals to the truism that elected legislators, not judges, ought to make law when the Constitution is silent. No one disputes that, of course; people disagree only about when the Constitution is silent. Bork says it is silent about gender discrimination and homosexual rights, even though it declares that everyone must have equal protection of the law. But he offers, as I have said, no argument for that surprising view.

He does suggest, from time to time, a more worrying explanation of his narrow reading of the Constitution, because he flirts with the radical populist thesis that minorities in fact have no moral rights against the majority at all. That thesis does recommend giving as little force to the framers' intentions as possible, by treating the Constitution as a collection of isolated rules, each strictly limited to matters that the framers discussed. But populism of that form is so plainly inconsistent with the text and spirit of the Constitution, and with the most apparent and fundamental convictions of the framers, that anyone who endorses it seems unqualified, for that reason alone, for a place on the Court.

There is very little else about political morality to be found in Bork's writings. He did declare an amazing political position long ago, in 1963. He opposed the civil rights acts on the ground that forbidding people who own restaurants and hotels from discriminating against blacks would infringe their rights to liberty. He tried to defend that position by appealing to John Stuart Mill's liberal principle that the law should not enforce morality for the sake of morality alone. He called the idea that people's liberty can be restricted just because the majority disapproves of their behavior an idea of "unsurpassed ugliness."

His analysis of the connection between liberty and civil rights was confused. The civil rights acts do not violate Mill's principle. They forbid racial discrimination not just on the ground that the majority dislikes racists, but because discrimination is a profound harm and insult to its victims. Perhaps Bork realized this mistake, because in 1973 he declared, in hearings confirming his appointment as Nixon's solicitor general, that he had come to approve of the civil rights acts. But in 1984, without acknowledging any change in view, he disavowed Mill's principle entirely, and embraced what he had formerly called an idea of unsurpassed ugliness, the idea that the majority has a right to forbid behavior just because it thinks it morally wrong." In a lecture before the American Enterprise Institute, in which he was discussing the liberty not of racists but of sexual minorities, he dismissed the idea that "moral harm is not harm legislators are entitled to consider," and accepted Lord Devlin's view that a community is entitled to legislate about sexual and other aspects of morality because "what makes a society is a community of ideas, not political ideas alone but also ideas about the way its members should behave and govern their lives." Perhaps Bork's convictions did shift so dramatically over time. But it is hard to resist a less attractive conclusion: that his principles adjust themselves to the prejudices of the right, however, inconsistent these might be.

In any case, the Senate Judiciary Committee should try to discover, if it can, the true grounds of Bork's hostility to ordinary legal argument in constitutional law. It should not be satisfied if he defends his announced positions by appealing only and vaguely to the original intention of the framers. Or denounces past decisions he might vote to repeal by saying that the judges who decided them invented new rights when the Constitution was silent. For these claims, as I have tried to show, are empty in themselves, and his attempts to make them more substantial show only that he uses original intention as alchemists once used phlogiston, to hide the fact that he has no theory at all, no conservative jurisprudence, but only right-wing dogma to guide his decisions. Will the Senate allow the Supreme Court to become the fortress of a reactionary antilegal ideology with so meager and shabby an intellectual base?

FOOTNOTES

[1] The idea of an *institutional* intention is deeply ambiguous, for example, and political judgment is required to decide which of the different meanings it might have is appropriate to constitutional adjudication. (See my book, *Law's Empire*, Chapter 9.) And the original intention theory appears to be selfdefeating, because there is persuasive historical evidence that the framers intended that their own interpretations of the abstract language they wrote should not be regarded as decisive in court. See H. Jefferson Powell, "The Original Understanding of Original Intent," *Harvard Law Review*, Vol. 98, p. 885 (1985).

[2] See Bork, "Neutral Principles and Some First Amendment Problems," *Indiana Law Journal*, Vol. 47, pp. 12-15 (1971).

[3] See Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Harvard University Press, 1977), pp. 118-119.

[4] See Bork's concurring opinion in *Ollman* v. *Evans* 750 F2d 970 (1984).

[5] For more general discussions of the same point in different contexts, see my *Taking Rights Seriously* (Harvard University Press, 1977), Chapter 5, *A Matter of Principle* (Harvard University Press, 1986), Chapter 2, and *Law's Empire* (Harvard University Press/Belknap Press, 1986), Chapter 9.

[6] See, for example, *Craig* v. *Boren*, 429 US 190 (1976).

[7] I might have used many other areas of constitutional law to illustrate the point I have been making about the idea of original intention. In the 1971 article I mentioned earlier, for example, Bork offered a theory about the original intention behind the First Amendment's guaranty of freedom of speech. He said that the framers intended to limit constitutional protection to politically valuable speech, and that the First Amendment therefore does not prevent legislators from banning scientific works they disagree with or censoring novels they find unattractive. He recently announced that he long ago abandoned that view, for the somewhat shaky reason that scientific works and novels may relate to politics (most of them do not). But he still apparently believes that the First Amendment has no application either to pornography or to what he regards as advocacy of revolution, on the ground that neither has any political value in his eyes.

He offers no justification, however, for attributing to the framers the relatively narrow principle that only political ideas deserve protection. No doubt they focused on political censorship, which was one of the evils they had fought a revolution against. But since Milton's *Areopagitica*, at least, it had been widely supposed that political speech must not be censored for a more general and abstract reason that applies to other forms and occasions of speech as well: that truth will emerge only after unrestrained investigation and communication. (A tract in favor of free speech published in 1800 argued that "there is no natural right more perfect or absolute, than that of investigating every subject which concerns us.") So once again the choice of which principle to attribute to the framers will be decisive. If we concentrate on their special concern about political speech, Bork's formulation seems more appropriate. If we look instead to the philosophical antecedents of that special concern, it does not. We need an argument to justify the choice, not a flat declaration that one formulation does and the other does not capture the original intention.

[8] He does so in a lecture to the University of San Diego School of Law on November 18, 1985, reprinted in the San Diego Law Review, Vol. 23, No. 4 (1986), p. 823. Bork attempted to reply, in that lecture, to an argument by Dean Paul Brest of the Stanford Law School which was apparently similar to the argument I have made here. Bork does not supply a reference to Brest's argument.

[9] In an earlier article (*The New York Review*, November 8, 1984) I contrasted Bork's methods, as exhibited in the *Dronenbureg* case, with the methods more traditional lawyers would have used.

[10] Bork, "Neutral Principles," p. 10.

[11] Bork, "Civil Rights—A Challenge," *The New Republic* (August 31, 1963), p. 19.

[12] Bork, "Tradition and Morality in Constitutional Law," The Francis Boyer Lectures, published by

the American Enterprise Institute for Public Policy Research.

[13] Bork did not, however, read Devlin very carefully. Devlin thinks the majority has a right to enforce its moral views only in unusual circumstances, when unorthodox behavior would actually threaten cultural continuity, and he does not think that his views would support making private homosexual acts between consenting adults criminal. See Patrick Devlin, *The Enforcement of Morals* (Oxford University Press, 1965).

Mr. FORD of Tennessee. Mr. Speaker, it is my firm opinion that Judge Robert H. Bork is an unsuitable appointee to the U.S. Supreme Court. Far too much is at stake for all of us, and especially for those Americans who are voiceless and disenfranchised, to allow his repressive philosophy to become the law of the land. His appointment has frightening implications for racial minorities, women, and gay people. His restrictive reading of the protections afforded by the first amendment are troubling. His support of the unfettered exercise of Presidential power is disturbing, especially in the time of Contragate. And his promotion of ostensibly principled positions under the rubric of judicial restraint threatens to move our society backward in a gradual retrenchment of many fundamental liberties that as Americans, we consider inalienable rights.

It is clear that Judge Bork would like to restrict the rights of racial minorities. He has questioned the constitutionality of the public accommodations provisions of the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1970 Amendments to the Voting Rights Act. He has gone so far as to argue that Shelley versus Kraemer wrongly prohibited State court enforcement of racially restrictive covenants. And he has expressed his opposition to the consideration of race in affirmative action efforts, such as that sanctioned in Bakke decision.

Judge Bork proposes to reduce the scope of the equal protection clause of the 14th amendment, arguing that it does not address matters other than race, and we have seen where he stands on the issue of race. He ruled that sexual harassment is not a form of sexual discrimination in Vinson versus Taylor. Moreover, he has failed to recognize that the constitutional guarantee of liberty encompasses a right to privacy. On this basis, he has expressed his view that Roe versus Wade is an unconstitutional and unjustified usurpation of State legislative authority, thus denying the right of women to exercise control over their own bodies; he has criticized the Griswold versus Connecticut decision permitting married couples to use contraception; and he has taken the opportunity in Dronenburg versus Zech, to deny the right to privacy in the context of homosexual conduct. Judge Bork has also consistently favored the rights of management, in both government and business arenas, over those of labor, by upholding the right to fire an employee who refused to drive an unsafe truck in Prill versus NLRB, and by permitting a restaurant to fire employees for distributing union material during working hours.

Although Judge Bork is a self-proclaimed champion of first amendment freedoms, it is important to examine the restrictive and selective nature of his application of the right to self-expression. We must scrutinize his belief that only speech which is necessary to the political process is protected, for it is clear that some freedom, applied to some people, is not freedom at all. His role in the "Saturday Night Massacre" and his support of broad and ultimately unrestricted Presidential power also merit close attention. In claiming independence from the bounds of precedent and focusing on original intent, he has fashioned out of the Constitution a facile document. For himself, he has shaped a role in which he may exercise his own conservative, indeed, fundamentalist, will.

Because we must seek to protect the individual liberties of each American, and redress injustice through both legislative and judicial action, Judge Bork must be rejected as a candidate for the Supreme Court. The Court's role as the most powerful protector of our rights and the balance between executive, legislative, and judicial power is otherwise jeopardized, trembling on the brink of decades of backward, rather than forward movement.

Mr. EDWARDS of California. Mr. Speaker, the appointment of the next Supreme Court Justice is a critical one, for this moment in history bears a heavy burden for the future of our country.

Does the Senate have the constitutional right and obligation to reject a nominee because they don't like his or her views? The answer is an emphatic "yes."

The text of the Constitution could not be clearer on the authority of the Senate with regard to judges of the Supreme Court. The President "shall nominate, and by and with the advice and consent of the Senate, shall appoint * * * Judges of the Supreme Court. * * *"

The legislative history of the writing 200 years ago of the Constitution is equally clear. The Constitutional Convention almost fell apart because of the fear of giving the President too much power. Many changes were adopted expressly to limit and to balance the powers given to the President.

Both the clear language of the Constitution and the original intent of the framers check the power of the President to shape the Federal Judiciary. Both give the Senate equal responsibility in determining the membership of the Nation's highest court.

He is contemptuous of the constitutional right of privacy as enunciated by the Supreme Court. He criticizes the Supreme Court for its 1965 decision that upheld the right of a married couple to use contraceptives—Griswold versus Conn—and denies the right to reproductive privacy espoused by the Court in Roe versus Wade.

In cases involving the efforts of minorities to be protected from a bullying majority, he takes a view that all who are the least bit familiar with the intent of the framers must find strange. He refers routinely to the "loss of liberty" by the majority whose intrusion the minority is trying to resist.

A most disturbing aspect of Bork's philosophy is this view of the Presidency. Of all the concerns expressed by our Founders in Philadelphia 200 years ago, the fear of a too forceful President, a President unchecked by Congress and the judiciary, obsessed the authors of the Constitution.

They saw in the President's office the foetus of a monarch. They insisted on the system of checks and balances, with no one branch overpowering the others. Bork's history reveals that he believes the President must have extraordinary power, beyond the control of Congress or the Courts.

As a law professor in 1978, Bork asserted that the President as Commander in Chief should have unlimited power to wiretap aliens or citizens suspected of subversive activity.

The constitutional authority of the Senate is advise and consent, and consent means the duty to make the decisions, "yes or no." As the respected legal scholar, Prof. Charles Black of Yale Law School points out, a judicial appointment is not the selection of one of the President's people, like the appointment of a Cabinet Member. There, due deference should be paid to the President's right to pick his or her own team.

But a Supreme Court Justice is not a member of the President's team. That judge must not be selected so as to work for or against the President. He or she is a judge appointed for life.

Presidents certainly have a right to nominate justices who share their philosophy; but, the Senate unquestionably has an equal right to reject them. The philosophy of a nominee to the Supreme Court must be just as relevant for the Senate as it was for the President making the nomnination.

The Senate's absolute right to give or withhold consent for any reason whatsoever was established in 1795 when the Senate rejected John Rutledge for the Supreme Court.

The President was George Washington, the most prestigious and respected chief executive in our history. And why did the Senate refuse its consent to President Washington? Because a majority of that body didn't like Rutlege's public disapproval of a treaty proposed by John Jay.

This solid interpretation of the provision to advise and consent has been followed consistently in the 192 years since then, and 20 percent of the various Presidents' Supreme Court nominations have been rejected. Let's not let anyone tell us that Judge Bork must be confirmed because President Reagan has the right to pick his own team. The Supreme Court is the people's team, not the President's, Democrat or Republican.

Just who is Robert Bork, and why are we so exercised about his nomination? Well, we know he was a professor of law at Yale, that he was Solicitor General under President Nixon, that he fired Special Prosecutor Archibald Cox, and act that was subsequently found by a Federal court to be unlawful. We know that presently he is a judge on a Federeal appeals court, a judge whose duty it is to follow the precedents set by the Supreme Court in all areas of law.

We are learning much about what kind of a man in Robert Bork, and how his mind works, and what we might expect from him as Supreme Court Justice.

Here's Bork on the Bill of Rights: "A hastily drafted document upon which little thought was expended."

On freedom of speech, Bork says, "The words are not necessarily absolute." He believes that only "explicitly political speech" is protected, not scientific, commercial, or even

literary speech. He rejected the requirement of a judicial warrant. During the Vietnam war, Bork wrote that President Nixon had the right, uncheckable by Congress, to send troops into Cambodia.

Consistently over the years Bork has made clear his troubling views on the vital subject of the power of the Presidency. And we do not like the image that is presented—unlimited power in the White House, unlimited power in the executive.

In nine cases before the court of appeals where access to Government information was an issue, Bork voted each time to deny access. And, what we are learning from reading his opinions and speeches and articles is alarming us. Day by day, hour by hour, we are becoming more strongly convinced that Bork's confirmation by the U.S. Senate could turn back the clock to some of the darkest days of our history.

For at least 30 years no American institution has served better in protecting our liberties than the Federal courts. Bork has spent the last 25 years denouncing the Federal courts. His presence on the Supreme Court would have tremendous impact on the evolution of constitutional justice and our society as a whole.

Too much is at stake for the Senate to shirk its constitutional obligation in reviewing this pivotal nomination. That duty must be fulfilled with the most extraordinary care.

Ms. OAKAR. Mr. Speaker, the Constitution is in jeopardy.

Robert Bork, President Reagan's pending nominee to the Supreme Court, rejects constitutional protections of our privacy, our civil rights, and our basic freedoms.

In fact, Judge Bork once claimed that the Bill of Rights was only "A hastily drafted document on which little thought was expended."

I say "no," Judge Bork.

No, we will not allow you to take us back.

As the Judiciary Committee of the other body, under able leadership, has noted, throughout his career, Judge Bork has opposed virtually every major civil rights advance. He has opposed:

The public accommodations bill;

The decision advancing open housing;

The decisions establishing the principle of one-person, one-vote;

The decision striking down racially restrictive covenants;

The decisions banning literacy tests;

The decision outlawing poll taxes;

And the decision upholding affirmative action.

Therefore, I say we oppose Judge Bork.

We must oppose a man who indicates women should not be included within the scope of the equal protection clause and who has opposed the equal rights amendment.

We must oppose this man whose unbroken repudiation of the doctrines preventing Government intrusion into the privacy of personal lives ignores the tradition and text of the Constitution.

For Judge Bork's severely limited view of the right to advocate political and social change bars from the courts many whose right to bring suit has been previously recognized.

Even in antitrust, Judge Bork advocates unprecedented judicial activism, proposing that the courts ignore almost 100 years of judicial precedents and congressional enactments.

On labor, Judge Bork's opinions markedly oppose the American worker.

And Judge Bork's overall record demonstrates extremely restrictive views on freedom of the press;

Finally, at this critical juncture in the history of the Court, when fidelity to the basic protections of the Constitution has been thrown into doubt by some in this administration, Judge Bork has supported executive powers essentially unlimited by law.

In the interests of our Nation, I urge all of my colleagues to oppose the elevation of Judge Robert Bork to be an Associate Justice of the Supreme Court.

We are literally one Justice away from injustice.

We must stand together.

Mr. Speaker, I include a copy of the resolution in the RECORD immediately following my remarks:

BORK RESOLUTION

Whereas an accurate portrait of Judge Bork's record demonstrates that he is not a Practitioner of Judicial Restraint;

Whereas the Bill of Rights was not, as Judge Bork claims, "A hastily drafted document on which little thought was expended;"

Whereas throughout his career, Judge Bork has opposed virtually every major Civil Rights advance;

Whereas Judge Bork: opposed the Public Accommodations Bill; opposed the decision advancing Open Housing; opposed the decisions establishing the Principle of One-Person, One Vote; opposed the decision striking down Racially Restrictive Covenants; opposed the decisions banning Literacy Tests; opposed the decision outlawing Poll Taxes; and opposed the decision upholding Affirmative Action;

Whereas Judge Bork has indicated that Women should not be included with the scope of the Equal Protection Clause and has opposed the Equal Rights Amendment;

Whereas Judge Bork's unbroken repudiation of the doctrines preventing unwarranted Governmental Intrusion into the Privacy of Personal Lives ignores the tradition and text of the Constitution;

Whereas Judge Bork has a severely Limited View of the Right to advocate political and social change;

Whereas Judge Bork bars from Federal Courts many whose Right to bring suit has been previously recognized;

Whereas in Antitrust, Judge Bork advocates Unprecedented Judicial Activism, proposing that the Courts ignore almost One Hundred Years of Judicial Precedents and Congressional Enactments;

Whereas Judge Bork's opinions on Labor have markedly opposed the American Worker;

Whereas Judge Bork's overall record demonstrates extremely restrictive views on Freedom of the Press;

Whereas Judge Bork has supported Executive Powers essentially Unlimited by Law: Be it therefore

Resolved, That in the interests of our nation and to preserve our proud tradition of progress, the Democratic Party opposes the elevation of Judge Robert Bork to be an Associate Justice of the Supreme Court.

Mr. SABO. Mr. Speaker, although I am always reluctant to advise the Senate on how it should perform its duties, there is an issue about which I cannot remain silent. Many actions that Congress takes this fall will be important. But the most important decision to be made concerns the confirmation of Judge Robert H. Bork to the U.S. Supreme Court.

The Senate should exercise its prerogative and reject Judge Bork's nomination. His appointment could usher in a new era in which the Court reverses much of the progress we have made in the past decades. Should the Senate confirm Judge Bork, I fear the Court may roll back many of the important advances for which we have fought for so long.

We have fought and won important battles to protect basic individual rights and liberties, to enhance our democratic processes, and to expand economic opportunities so all Americans can share in the American dream. Now is not the time to retreat from these victories. The American people do not want us to turn back the clock and revisit these issues. Instead we must move forward.

While we have been surprised in the past at the change in philosophy that has occurred in some justices once they joined the Court, we cannot gamble that this will happen with Judge Bork. It is clear—from his writings, lectures, and opinions covering 20 years—he has a unique view of the Court's role in our evolving democracy. He has a radical view of the Constitution itself.

Judge Bork has a hostile attitude toward the role of the Court and the Constitution in ensuring the rights of individuals, minorities, women, and right to privacy. He has opposed every piece of civil rights legislation and Court decisions designed to protect civil liberties. Under his view of the Constitution women and minorities get second class protection. He is biased against the rights of the individual and the public, in favor of big business.

Judge Bork disagrees with numerous landmark court decisions, many of which he would willingly vote to overturn. Many of these decisions are now deeply woven into the fabric of our society. The vast majority of Americans have come to accept these rulings as the established law of the land.

It is especially ironic that as we celebrate the bicentennial of the U.S. Constitution, President Reagan has nominated a man who wants to tear that remarkable document to shreds. It is sad that he has chosen a man who could embark on a major assault against the Constitution.

I am sure that Judge Bork is a smart man. But intelligence is not the only criterion that should be used to evaluate whether he should serve on the highest court in the land. His philosophy and ideology are extremely important. Just as the President would not nominate a man whose views were contrary to his own, the Senate should not approve a man whose philosophy is so radically different from the mainstream of American thought.

The Court was never intended to be a tool by which the President alone could promote his ideology. It is not a subdivision of the executive branch of Government. Instead, it is a vital independent third branch of our Government. That is why the Senate has the author-

ity to review and pass judgment on a President's recommendation.

The Senate in the case of Judge Bork has a grave responsibility to use its veto power over the President's nomination. I urge the Members of the other body to reject President Reagan's nomination of Judge Bork. In doing so, you will have the support and heartfelt thanks of many of us in this body, the American people, and future generations who want to move forward in the pursuit of justice, liberty, and democracy.

Mr. DE LUGO. Mr. Speaker, it gives me great pleasure to join my colleagues in speaking up against the nomination of Judge Robert Bork to the Supreme Court, and I commend the Black Caucus for putting this event together. While the Members of the other House have the official power to advise and consent on such nominations, we in "the people's House" also must be heard on this crucial nomination.

The debate over Robert Bork has become, quite appropriately, a debate on the future direction of the Supreme Court and this country. It's a debate on whether we are really committed to full justice for blacks and women and all our citizens.

We've got to tell President Reagan and the country that we are not backing away from our commitment to bring justice to all the people of this country. We don't want or need a Supreme Court that is inclined to dismantle the political machinery and judicial rulings that have brought us this far in civil rights. We don't want or need a Supreme Court that seeks to carry out the overblown "Reagan revolution" long after this President is out of office.

When the President retires in 16 months, he is welcome to return to his romanticized, nostalgic view of American life in the 1930's and 1940's, but he must not take the Supreme Court with him.

The next Supreme Court nominee is just too important to let President Reagan appoint a judge who has challenged the legal rulings that have shut down racial segregation in this country; a judge who has challenged the legal rulings that have expanded women's rights in this country; a judge who, 15 years ago, was willing to fire the Watergate special prosecutor even after his two superiors had preserved their honor by refusing to carry out that Presidential order.

In many respects, Robert Bork represents the very judicial philosophy that we have been fighting against to make progress in civil rights in the last 40 years. We can't afford to give him a hand in the future of the Supreme Court.

I look forward to seeing Judge Bork's nomination defeated. And I look forward to seeing the national debate over this man's judicial philosophy stir up a renewed commitment to civil rights for all in this country.

Mr. RANGEL. Mr. Speaker, I am pleased to join with my colleagues to express opposition to the nomination of Robert Bork to the U.S. Supreme Court. Today, there is nothing that is more threatening to the progress of civil rights, personal freedoms, and the rights of individual citizens in this country than the likelihood of Bork as an Associate Justice to the Supreme Court. This may be the only moment in the history of my tenure as a Member of the House that I long for a vote in the Senate.

I have always known that if the Reagan administration would have a long-term impact on the history of this country, it would most definitely have to be through the courts. As lifetime members, there is basically no control over the actions of a member of the judicial branch once appointed. This is why I urge all individuals who cherish the freedoms expounded in the Constitution to oppose the Bork nomination and oppose it with all veracity.

The administration defends its nomination of Bork as an effort to establish a balance on the Supreme Court, support for judicial restraint. Well, if Bork's judicial restraint is evidenced by his long line of opinions in opposition to individual rights, statements against the rights of minorities, and outright expression of opposition to the controversial Roe versus Wade, then I have long had a misconception of the term judicial restraint.

Former Associate Justice Lewis Powell was the paradigm of judicial restraint. He realized that the Constitution is filled with ambiguities, unintended clauses, and in need of interpretation. Powell was from the school of thought that interpretation should be done according to stringent guidelines, taking into account judicial precedent—Bork has no understanding of these principles.

No, Robert Bork is not from the school of judicial restraint. What he is, is an ideological tool of an extreme conservative movement attempting to force its ideology on an unwilling, unsuspecting public. He has set precedents for not following precedent, and expressed publicly that he does not feel constrained by precedent.

Furthermore, Bork is opposed to key provisions of the Civil Rights Act of 1964; is in favor of a congressional limit on the use of busing as a tool of school desegregation; and is critical of the landmark decision in the Bakke case which endorses affirmative action. Bork is not the right person for the job today. While I see the mood of the country shifting to the center, it is nowhere near the far end of the spectrum where Robert Bork resides.

I have seen the spectrum of change in this country. I saw the Great Depression and World War II. I grew up in the tide of change in the forties and fifties. I served in the Korean war and watched the social revolution of the sixties. I have seen the progress of the people and worked as a Member of this great body to save the economic structure of this beloved country. All of this progress, all of this change will be jeopardized if Robert Bork is appointed to the highest Court of this land, the Court that has the final word on all judicial questions.

Mr. Speaker, it is my fervent desire that Bork will not be nominated to the Supreme Court. His nomination is not in step with the mood of the Nation. I hope my colleagues in the other body will recognize this and vote "no" on Bork.

Mr. HAYES of Illinois. Mr. Speaker, I rise today with my distinguished members of the Congressional Black Caucus and other Members who have opposed the nomination of Judge Robert H. Bork.

Early in July 1987, President Reagan nominated Judge Robert H. Bork to be an Associate Justice of the U.S. Supreme Court. This nomination would replace Associate Justice Lewis F. Powell, who is retiring from the Court.

In evaluating Judge Bork's nomination to the Supreme Court, the U.S. Senate has a constitutional obligation to consider independently whether the nomination is in our Nation's best interest. The framers of the Constitution divided the appointment power between the President and the Senate, just as they divided the treaty power. The U.S. Constitution makes the role of the Senate equal to that of the President. One of the fundamental functions in confirming judicial nominees is to prevent partisan, ideological court packing by a President. Mr. Reagan has tried to remake the Supreme Court to mirror his views. The Senate must reject nominees who represent a drastic shift in the Court's to one extreme if a Senator believes the shift would be harmful to the Nation. The Senate has always acted on broader criteria than just academic and professional credentials.

In the area of civil rights, Judge Bork said that this—

> [Legislation] outlawing discrimination in business facilities serving the public . . . ignore[s] the fact that it means a loss in a vital area of personal liberty. The legislature would inform a substantial body of the citizenry that in order to continue to carry on the trades in which they are established *they must deal with and serve persons with whom they do not wish to associate.* (added) . . ., [T]he simple argument from morality to law can be a dangerous non sequitur. Civil Rights—A Challenge, by Robert Bork, The New Republic, August 31, 1963, p. 22.

Judge Bork sums up his view of the anti-discrimination law as coercion and "unsurpassed ugliness."

A recent study in the Columbia Law Review reveals Judge Bork's voting record is far more conservative than that of the average Reagan judge. Judge Bork, in a series of contentious cases as an appellate court judge, voted on the conservative side over 90 percent of the time—making him far more conservative than the average Reagan appointee in the U.S. Court of Appeals, the study concluded.

I believe that evaluating Judge Bork's published opinions, and his record over 5 years which reveals that he participated in about 400 published opinions of the U.S. Court of Appeals for the District of Columbia Circuit, and he had written about 144 majority, concurring, and dissenting opinions, that were examined by the Public Citizen Litigation Group in Washington, DC [Public Citizen] show that Judge Bork's opinions reflect judicial restraint and closed mindedness.

I understand that, Public Citizen focused on Judge Bork's opinions and those cases in which the judges on the court disagreed and identified 56 "split decisions" in which Judge Bork participated—those cases in which one or more judges disagreed with the majority on how the case should be resolved and filed a dissenting statement. Judge Bork's votes in split decisions are significant for several reasons. They made a difference in the outcome and tend to be the more controversial cases, some of which may reach the Supreme Court.

Also, Public Citizen found that Judge Bork's record demonstrates, among other things, that:

His performance on the D.C. Circuit is not explained by the consistent application of judicial restraint or any other judicial philosophy; instead in split cases, one can predict his vote with almost complete accuracy simply by identifying the parties in the case;

In split cases in which the Government is a party, Judge Bork voted against consumers, environmental groups, and workers almost 100 percent of the time and for business in every such case;

In 14 split cases, Judge Bork denied access to the courthouse every time among the many losers was the U.S. Senate, which according to Judge Bork's dissent, could not bring a case of major constitutional significance to the Federal courts;

In addition, it has been reported in the Public Citizen's analysis, "The Judicial Record of Judge Robert H. Bork," August 1987, page 20, that his position in labor cases shows him as no friend of labor.

In the labor area, Judge Bork had been differential to agency decisions that upheld the rights of business institutions but nondeferential to those agencies that ruled in favor of workers of their unions. Of 8 cases in which the members of the court disagreed about the proper outcome, Judge Bork voted against the workers' claim 7 times (1 of which was a vote against the workers' claim against their union; in another case, the only issue involved an attorneys' fee claim). The only vote in favor of an employee came in a case in which Judge Bork voted against the worker on the principal issue, by upholding an employer's decision to discharge the worker, but remanded the case for the agency to explain a procedural ruling made against the worker, although the terms of the remand were such that defeat for the worker was nearly inevitable. *York v. Merit Systems Protection Board*, 711 F.2d 401 (1983).

I oppose the nomination of Judge Robert H. Bork to be an Associate Justice of the U.S. Supreme Court.

I believe that Bork is an extreme conservative and confirmation of Judge Bork would shift this closely divided Supreme Court sharply to the right.

Judge Bork is a believer and advocate in judicial restraint. Judge Bork may vote simply by identifying the parties in the case.

Judge Bork consistently votes against workers, consumers, environmental groups and for business in cases that come before him, almost 100 percent of the time.

Judge Bork's record reflects strong opposition to the principle of one-person, one-vote; denying the enforceability of racially restrictive covenants; and extending the reach of the equal-protection clause. (Washington Post September 14, 1987, p. A3) Judge Bork is outside the American mainstream on the questions of abortion, civil rights and the rights of individuals against the Government.

Judge Robert H. Bork by his record has never shown the least concern for working people, minorities, the poor, or for individuals seeking the protection of the law to indicate their political and civil rights. Instead, he has consistently protected the rights of businessmen, of property owners, and of the executive branch of the Federal Government.

We're one vote away from losing our most fundamental rights; for example, we are just one Justice away from injustice. We all know that it is the Senate's right and responsibility to stand up to this ideological court packing.

I oppose the nomination of Judge Robert H. Bork and encourage the members of the Committee on the Judiciary in the U.S. Senate to reject Judge Bork for the U.S. Supreme Court.

Mr. DIXON. Mr. Speaker, it is with a measure of irony that I rise on this the 200th birthday of the signing of the American Constitution to oppose the nomination of Robert H. Bork to the Supreme Court of the United States. On this, I find myself compelled to speak out against the nomination of this candidate.

It is ironic because as we pay tribute to the document that "secured the blessings of liberty" for nearly seven generations of Americans, a decision must be made on a judicial nominee who, I strongly suspect, would act to reverse many of the important Supreme Court decisions that have expanded the scope of protections guaranteed by the Constitution.

Justice Thurgood Marshall ignited a thoughtful, necessary constitutional debate last May, when he cautioned Americans against a blind veneration of the original document and its historic framers. In brief, he asked if we should truly applaud the Founding Fathers' vision of American democracy—a democracy that denied basic liberties to major sectors of the Nation's population?

Like Justice Marshall, I believe that the Constitution we are celebrating today is the result of the diligent work of many men and women who worked to erase the serious defects in that original document, working toward the gradual expansion of the Constitution's scope to include protection of all Americans.

It has been relatively recent in American constitutional history that the judicial branch has joined dedicated private citizens and Congress to expand the definition of the Constitution to include all Americans. Beginning with the landmark case, Brown versus the Board of Education of Topeka in 1954, the Supreme Court has handed down decisions expanding civil rights for racial minorities and women. With the Brown decision, the Court struck down racial segregation as unconstitutional; it has since sanctioned the use of affirmative action as a centerpiece for securing the civil rights of historically underprotected minorities. In the latter half of the 20th century, the Supreme Court has played a progressive role in ensuring that the Constitution is regarded as a living document.

Judge Bork, who professes to be guided by the doctrine of "original intent", has reserved special scorn for this type of judicial progressivism.

Bork's reputation for judicial restraint is undeserved, and the Reagan administration's portrayal of him as a mainstream jurist who approaches cases with an open mind, a misrepresentation. His writings and speeches as a teacher and a scholar, and his decisions as an appeals court judge reveal an appetite for conservative activism. His addition to the Supreme Court would virtually ensure a five-vote majority that would undo much of the social progress.

The American people have worked hard in the past 200 years to extend the rights guaranteed by the Constitution to include all citizens. On this special birthday, as we recommit ourselves to upholding the Constitution as a living document, we must reject the Supreme Court nomination of an individual who threatens to drive us backward in our struggle toward the attainment of equal rights and equal protection for all. I urge my esteemed Senate colleagues in the Judiciary Committee to vote against the Bork nomination.

□ 1550

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman for yielding.

First I want to thank the gentleman from Michigan for this special order and this discussion.

At the time that the name was proposed, the gentleman from Massachusetts [Mr. FRANK] had a discussion on the House floor that I joined the gentleman in; but I want to thank the gentleman from Michigan for the first very substantial and documented portrayal and narration of the Bork thinking as expressed through the exercise of judicial power.

In our system of democratic government, the people in choosing candidates say that this was a nominee in an open election. The citizens of the United States nowadays, in order to form a properly informed judgment as to the merits and qualifications of an individual seeking public office would, if having that information, evaluate what that individual did when he or she actually exercised power. You have a record, in other words, of performance.

In the case of the judiciary, of course, since it is not in the case of the Federal judiciary, an elective body, and is an appointive organ of the Government, the submission by a President as an appointee or the suggested appointment of a candidate for a judicial post has always been considered a political situation. Therefore, the people's representatives in the other body are the only ones that have some kind of residuum insofar as judgment evaluations of that candidacy.

□ 1605

When President Theodore Roosevelt appointed the then and later great renowned Charles Evans Hughes, and even before Charles Evans Hughes in the case of Holmes, he stated in a letter to the then leaders that the reason he had appointed him was that he considered him very safe politically. In other words, he was an entrust-

ed official who could be trusted that if some out-and-out political type of judgment was going to be exercised by the judge, he would be safe insofar as the President was concerned.

Well, I think every President has always sought that, even in the nomination of the district judges. I can understand the idea and the notion that somehow or other, as President Reagan would like to advance the notion, that this is not a political determination is, of course, absurd.

Therefore, the only thing that I can see that a responsible Senator entrusted with his constitutional grant of power could do would be to examine the record, not Judge Bork's exposition of ideology in some speech or some article for a law review, but what was it that he did at a given moment in a specific case structured in accordance with an issue burgeoning up from the midst of American society, and there the record is limpidly clear, as so ably pointed out by the gentleman from Michigan.

In the Shelly case, I happen to have had a very intimate association with that in my area. After the war we had some returning veterans who had been injured, had disabilities, and some money with which to purchase a home. When the war was over with, we had an upsurge in home construction for some areas in my city of San Antonio were developed out of the old platted subdivisions, some of which had been platted and described in the master deed records of the county courthouse. Even if you were to go today and examine the master deed records, you would still see the evidence of these restrictive covenants in which the original grantor, the developer and proprietor, reserved the right in case the property was attempted alienated, either through sale, deceasance or inheritance or the like, to a person of Negro or Mexican identification. These were the words.

There were some sections in other parts of Texas where there was an additional category in which the word Jew or Jewish was added, but in our area it was very specifically Negro or Mexican.

So after the war I was instrumental in the formation of the only organization of its kind. It was an attempt to try to put together some of the men who had made some money who were of Mexican descent and had made some money during the war and had very little evidence of social consciousness. So I got a few of them together, organized what we called the PAPA, the Pan American Progressive Association. I tried to orient them along the lines of improving through the joinder of this very important new established group a recognition of some badly needed improvements, such as extension of water mains in the very downtown area of San Antonio which for a variety of reasons had not been done.

One day a couple came in, a gentleman by the name of Humphries, a 100-percent disabled soldier, who had served with a young man by the name of Poente. So the young man, Poente, and Mr. Humphries on crutches came in with the elder Poente, Mr. Anton Poente. They had heard about this organization, had heard about me, because I had also worked with some of the garment industry workers in teaching English and citizenship classes and one of his daughters had been involved, so they came to me. They were puzzled. They had a paper. This paper was a restraining order notice that was served on Humphries, advising him that the 37th District Court of Bexar County was scheduling a hearing on that temporary restraining order to prevent the occupation of this little dwelling that Mr. Humphries was attempting to sell and for which he had already accepted $3,000 in cash. At that time you could buy a house for $3,000. He had accepted this from the Poentes. It was all the money they had.

Mr. Humphries had immediately invested that money in doctors and hospitals and whatnot and he did not have a penny left, when suddenly they were confronted with not being able to either occupy or Mr. Humphries maintaining ownership. They were faced with a reversionary clause that said that piece of property would revert to the original owner, one Thurmond Barrett, Sr.

When I explained to them what the paper was about, I said, "You've got to hurry, because this is Thursday and next Monday you have to have some appearance in court. You can't lose by default."

To make a long story short, I got a volunteer lawyer, and through his help, a young man who is now an appellate court judge, who had been a companion of mine in law school and quite a scholar, Mr. Carlos Cadena, and through his help I explained to him that one of the last things I had done in law school was to have made a special study of restrictive covenants, that I had picked up in reading the journals that a group of black citizens in St. Louis, MO, in 1946 had finally put together one quarter of a million dollars and had filed a case with the hope of reaching the Supreme Court.

Finally, in 1947, in effect they did. The then Solicitor General for the government for President Truman's administration, Mr. Perlstein, announced that he was going to join that group as amicus curiae in support of their case before the Supreme Court.

So there you had the Solicitor General of the United States, the Justice Department of the United States, if you please, of Harry Truman's era, going into court in a way that you cannot see Judge Bork, who was advancing the counterargument sustaining the propriety in law of the concept of restrictive covenants based on race, color, or creed.

So I advised Mr. Cadena that it was expected that in the spring term of 1948 the Supreme Court would decide that the odds were very good that the decision would be favorable.

So I suggested that his argument to the 37th District Court judge, the Honorable Judge S.G. Tayloe, would withhold any proceedings until such time as the Supreme Court could be reasonably expected to hand out a decision. It did on May 3, 1948.

Judge Tayloe immediately convened, held in concordance with the Supreme Court. Mr. Barrett appealed to the Fourth Court of Civil Appeals. He went on and appealed it to the Texas Supreme Court. So in the Texas Supreme Court, we now have a corpus or a tradition and a precedent in which the unconstitutionality of restrictive covenants based on race, color or creed, were upheld at the State level; but later when I read of Judge Bork's pronunciamentoes in that respect, I knew then and there that he was tainted with the kind of judicial imperfection that would render him incapable and particularly in the capacity of Chief Justice of the Supreme Court of the United States.

Mr. CONYERS. Well, I knew that the Shelly case would stir my colleague's memory into his important activities, because as the chairman of the subcommittee that deals with housing, I want to let him know that we are grateful for the modest progress that we are hopefully making as we study the plight of the low-income citizens who number in the millions in our country and his work has been done. I deeply appreciate the gentleman's contribution.

Mr. GONZALEZ. I in turn thank the gentleman for his generous expression.

□ 1620

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. (Mr. WILSON). Is there objection to the request of the gentleman from Michigan?

There was no objection.

IN CELEBRATION OF OUR BICENTENNIAL OF OUR CONSTITUTION

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Florida [Mr. YOUNG] is recognized for 10 minutes.

Mr. YOUNG of Florida. Mr. Speaker, Americans throughout our Nation and freedom loving people throughout the world are joining together today to celebrate the bicentennial of our Constitution, which remains the heart of our Nation's Government—the greatest democracy the world has ever known.

Fifty-five delegates met in Philadelphia during 4 hot and steamy summer months in 1787 to draft a document to govern our newly liberated Nation. The product of their efforts was not arrived at easily or without heated debate, and it was very different than any constitution the world had ever known. Finally, on September 17, 1787, the debate was concluded, compromises were completed, and 39 delegates representing 12 States signed the Constitution and sent it to the 13 States for their ratification. It is this historic occasion we celebrate today with ceremonies at Founders Hall in Philadelphia and in each of our 50 States and thousands of communities and schools.

Yesterday I had the privilege of taking part in a Celebration of Citizenship on the west front steps of our Nation's Capitol. This program served as a prelude to today's ceremonies and those of the next 4 years as we mark special events in the early days and months of this great governing document, including its ratification by the States and its implementation by our forefathers. The celebration yesterday was bursting with symbolism and characterized what has enabled the Constitution to endure for two centuries.

Gathered on the steps of our Capitol were the President and his Cabinet members, the Justices of the Supreme Court, and Members of Congress, the leaders of our three branches of Government. The President, Justices, and Members of Congress are delegated three separate but equally important roles in our Government which provide an intricate system of checks and balances to ensure that no one branch oversteps the bounds set forth in the Constitution. This sharing and division of power was unique to the world in 1787 for no nation had ever been governed under such a system.

Our celebrations yesterday and today also provide a time to reflect on the words of the Constitution and to marvel at the resiliency of this document. Although it is but a few pages long, the Constitution was so comprehensive and well drafted that it has had to be amended just 17 times by the American people. The first 10 of the 26 amendments, known as the Bill of Rights, were ratified by the States just 4 years after the Constitution was written and now provide for the basic freedoms and liberties for which our Nation stands.

This document is so enduring, that it is among the oldest constitutions governing any nation today. It is even more remarkable when you consider that two-thirds of all the world's constitutions have been adopted in the past 17 years.

It is most appropriate that during this time of celebration, the work of our Nation's governing bodies goes forth as established in the Constitution. The Senate is in the midst of its consideration of the President's nominee for a seat on the Supreme Court, the Congress is negotiating with the executive branch to reach agreement on a number of our Nation's important fiscal matters, and the President and his key cabinet leaders continue their negotiations with world leaders on a number of major foreign policy questions.

Perhaps just as symbolic as the functioning of our system of checks and balances, is the way in which these matters are considered and debated. Diverse views and sharp rhetoric characterize each of these majors issues before the executive, judicial and legislative branches this week. That is, however, as the Constitution would have it in protecting the rights of free speech for all Americans. The debate was no less heated or at times divisive 200 years ago as the delegates drafting the Constitution sought grounds for compromise to achieve their goal of completing a governing document for our fledgling nation. In fact, three delegates so strongly disagreed with the final product that they refused to sign, and one State refused to even send a delegation to Philadelphia for these proceedings.

Our Constitution promotes debate and the airing of differing viewpoints. And it stands apart from the so-called constitutions of other nations, especially those of the Communist bloc, which say they provide for and protect the freedoms of speech, religion, and the press but are in reality totalitarian states that stifle these basic human rights.

Our Constitution also provides for the orderly transfer of power within the Government and only allows for changes to this governing document with the consent of the governed. This sharply contrasts with many nations where military juntas and coups forcefully bring about a change of power and where constitutions are drafted and discarded like old newspapers at the direction of autocratic rulers or ruling parties.

Certainly the strength of the concepts and words embodied in our Constitution has enabled it to endure the test of time, but these concepts and words are only as strong as the will of the people it governs. This exceptional document, which has served our Nation well in times of prosperity as well as in times of crisis, gathers its strength from the spirit and enthusiasm of the American people. That spirit was in evidence yesterday as millions of people nationwide paused to recite together the Pledge of Allegiance. Children in our schools, workers at construction sites, and brokers on the floor of the New York Stock Exchange joined together "* * * one nation, under God, indivisible, with liberty and justice for all."

The Constitution has so inspired the American people that thousands of men and women have laid down their lives over the years to protect the rights and privileges it guarantees. This great document has also inspired people throughout the world. Millions of men, women, and children have sought refuge in our Nation where they will be free to pray, work, and raise their families. Many more people, living under Communist tyranny, have been inspired by the Constitution to keep alive their dream to live in a land which provides for the same freedoms as we enjoy in the United States.

Under our Constitution, every American plays a role in the governing of our Nation. The most basic right it guarantees is the right to vote on election day. Sadly enough, many people throughout the world will never have the opportunity in their lifetimes to cast a ballot in a free election.

It has been a distinct privilege for me to serve the people of Pinellas County, FL, as their elected representative to the U.S. Congress these past 17 years and it is a special honor to have been one of only 11,000 Americans to have served in this great body. As our Nation begins in earnest its celebration of the Constitution, we are in the midst of celebrating for the next 2 years the convening last January of the historic 100th Congress.

Mr. Speaker, if there is one lesson to be learned from our celebration, it is that we cannot, and must not ever take our Constitution for granted. The struggle to gain and maintain the freedoms and liberties we enjoy today was too long and hard and we have paid a high price over the years to defend these rights. As we have learned from history, the protections afforded us under the Constitution can all too quickly be snatched away and are difficult to regain.

Our Nation must remain firm in its resolve to remain strong to repel any challenge to our freedom. I can assure you that this Member of Congress is committed to uphold his constitutional responsibility to provide for our national security.

The Constitution has served our Nation well for 200 years and it is incumbent upon each of us to ensure that it continues to serve future generations just as well. Today all Americans reaffirm their belief in the greatest document democracy has ever known and give thanks to the many people, the heralded and the unknown, who have fought, served, and strived to protect and carryout its charge.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. HUTTO (at the request of Mr. FOLEY), for today after 3 p.m., on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. ARMEY) to revise and extend their remarks and include extraneous material:)

Mr. BURTON of Indiana, for 5 minutes, today.

Mr. WOLF, for 60 minutes, today.

Mr. PARRIS, for 5 minutes, on September 21.

Mr. PARRIS, for 5 minutes, on September 22.

Mr. PARRIS, for 5 minutes, on September 23.

Mr. PARRIS, for 5 minutes, on September 25.

Mr. JEFFORDS, for 60 minutes, on September 21.

Mrs. BENTLEY, for 60 minutes, on September 21.
Mrs. BENTLEY, for 60 minutes, on September 22.
Mrs. BENTLEY, for 60 minutes, on September 29.
Mrs. BENTLEY, for 60 minutes, on September 30.
(The following Members (at the request of Mr. CONYERS) to revise and extend their remarks and include extraneous material:)
Mr. ALEXANDER, for 5 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 60 minutes, on September 28.
Mr. HUBBARD, for 60 minutes, on September 30.
(The following Members (at the request of Mr. COATS) to revise and extend his remarks and include extraneous material:)
Mr. YOUNG of Florida, for 10 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. CONYERS, and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $8,592.50.

(The following Members (at the request of Mr. ARMEY) and to include extraneous matter:)
Mr. LAGOMARSINO in two instances.
Mr. PACKARD in two instances.
Mr. DORNAN of California.
Mr. STANGELAND.
Mr. GOODLING.
Mr. SOLOMON.
Mr. KEMP.
Mr. DAVIS of Michigan.
Mr. BLAZ.
Mr. FIELDS.
Mr. COURTER.
Mr. HAMMERSCHMIDT in two instances.

(The following Members (at the request of Mr. CONYERS) and to include extraneous matter:)
Mr. RANGEL.
Mr. DORGAN of North Dakota.
Mr. TORRICELLI.
Mr. ECKART.
Mr. RODINO.
Mr. LANTOS in two instances.
Mr. WALGREN.
Mr. MONTGOMERY in two instances.
Mr. LEHMAN of California.
Mr. BARNARD.
Mr. TORRES.
Mr. SOLARZ.
Mr. RAHALL.
Mr. GUARINI.
Mr. HAWKINS.
Mr. PEPPER.
Mr. SYNAR.
Mr. EDWARDS of California.

ADJOURNMENT

Mr. CONYERS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 29 minutes p.m.), under its previous order the House adjourned until Monday, September 21, 1987, at 12 noon.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of various House committees concerning the foreign currencies and U.S. dollars utilized by them during the second quarter of calendar year 1987 and miscellaneous reports filed with the Committee on House Administration and forwarded to the Clerk of the House concerning the foreign currencies and U.S. dollars utilized by Interparliamentary Unions and other similar groups or delegations during calendar year 1986 in connection with foreign travel pursuant to Public Law 95-384 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1987

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Walter Fauntroy	4/12	4/17	Haiti		564.00		814.00				1,378.00
Hon. Stan Parris	4/11	4/15	Korea		656.00						656.00
	4/15	4/17	Thailand		294.00						294.00
	4/17	4/19	Hong Kong		372.00		[3] 4,673.00				5,045.00
William C. Danvers	5/21	5/25	Canada		632.00		[4] 9,664.20				10,296.20
Hon. Walter Fauntroy	6/6	6/13	Egypt		686.00		[5] 4,093.00				4,779.00
Hon. Al McCandless	6/6	6/13	Egypt		686.00		[5] 4,093.00				4,779.00
John Balder	6/6	6/13	Egypt		686.00		[5] 1,881.00				2,567.00
Mark Constantine	6/6	6/13	Egypt		686.00		[5] 1,996.00				2,682.00
Nelle Temple	6/6	6/13	Egypt		686.00		[5] 1,857.00				2,543.00
Robert Brown	6/6	6/13	Egypt		686.00		[5] 1,990.00				2,676.00
Hon. Stan Parris	6/12	6/16	France		936.00		[3] 3,766.00				4,702.00
Hon. Carroll Hubbard	6/12	6/16	France		936.00		[3] 3,766.00				4,702.00
Committee total					8,506.00		38,593.20				47,099.20

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military aircraft provided. Figures reflect comparable 1st class commercial rate.
[4] Military air transportation round trip.
[5] Commercial air transportation round trip.

FERNAND J. ST GERMAIN, Chairman, Aug. 19, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1987

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
K.C. Bell	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Hon. Mario Biaggi	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Hon. Jim Bunning	5/14	5/15	Panama		97.00						
	5/15	5/16	Costa Rica		92.00						
	5/16	5/17	Nicaragua		0.00						
	5/17	5/18	Honduras		92.00		[3] 1,490.93				1,771.93
Harry F. Burroughs	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Sharon K. Brooks	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Rudolph V. Cassani	5/8	5/15	England	761.90	1,280.00		[4] 765.00				
						77.40	[5] 129.63				2,174.63
Catherine R. Cooper	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1987—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Gina DeFerrari	6/22	6/28	England		[6] 700.00		[4] 731.00				1,431.00
Hon. Jack Fields	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Wallace J. Henderson	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Thomas J. Manton	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
James McCallum	6/6	6/14	Scotland/United Kingdom	593.29	968.00		[4] 2,555.00				
						18	[5] 29.34				3,552.34
Kurt R. Oxley	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Hon. Owen B. Pickett	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Jeffrey R. Pike	6/25	6/26	Canada		100.00		[4] 302.85				402.85
Gerald Seifert	6/24	6/28	Hong Kong		600.00		[4] 1,946.00				2,546.00
Hon. W.J. Billy Tauzin	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
David S. Whaley	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Cyndy Wilkinson	5/28	5/31	Panama		588.00		[3] 956.48				1,544.48
Lori Williams	6/20	6/28	England		[6] 800.00		[4] 2,234.00				3,035.00
Committee total					12,373.00		22,618.99				34,991.99

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Prorated portion of military transportation.
[4] Commercial airfare.
[5] Ground transportation.
[6] Cash advance issued by State Department—advance also covered train fare from London to Bourmouth and return.

WALTER B. JONES, Chairman, July 30, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMISSION ON SECURITY AND COOPERATION IN EUROPE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1987

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Samuel G. Wise	5/3	5/13	Austria		[3] 630.00		1,134.00				1,764.00
Meredith Brown	5/4	5/22	Austria		2,268.00		1,134.00				3,402.00
Orest Deychakiwsky	5/4	5/22	Austria		2,268.00		1,134.00				3,402.00
John Finerty	5/8	5/30	Austria		2,772.00		1,134.00				3,906.00
Lynne Davidson	5/11	6/18	Austria		4,788.00		1,209.00				5,997.00
Mary Sue Hafner	5/20	5/25	Canada		790.00		[4] 554.59				1,344.59
Ronald McNamara	5/21	5/25	Canada		632.00		[5] 303.32				935.32
Samuel G. Wise	5/20	6/13	Austria		[3] 1,512.00		1,286.00				2,798.00
Barbara Edwards	5/31	6/13	Austria		1,638.00		1,219.00				2,857.00
Commitee total					17,298.00		9,107.91				26,405.91

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] One-half per diem.
[4] Military and commercial transportation.
[5] Round trip military transportation.

STENY H. HOYER, Chairman, July 31, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, SELECT COMMITTEE ON HUNGER, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1987

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Mickey Leland	6/28	6/29	Angola	NA	NA		14,199.41				
Committee total							14,199.41				

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MICKEY LELAND, Chairman, Aug. 19, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THE NORTH ATLANTIC ASSEMBLY, BELGIUM AND FRANCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN FEB. 13 AND FEB. 18, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Charles Rose	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						
Robert Garcia	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						
Bart Gordon	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						
Bill Richardson	2/16	2/18	France		501		[3] 6,242.23		[4] 1,294.00		8,037.23
Ralph Regula	2/13	2/15	Belgium	12,958	268		[3] 5,005.44		[4] 884.78		6,158.22
Peter Abbruzzese	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THE NORTH ATLANTIC ASSEMBLY, BELGIUM AND FRANCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN FEB. 13 AND FEB. 18, 1986—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Ronald Lasch	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						
Spencer Oliver	2/13	2/15	Belgium	12,958	268		11,910.29				12,679.29
	2/15	2/18	France	3,608.20	501						
Arch Roberts	2/13	2/15	Belgium	12,958	268.00		11,910.29				12,679.29
	2/15	2/18	France	3,607.20	501.00						
Josephine Weber	2/13	2/15	Belgium	12,958	268.00		11,910.29				12,679.29
	2/15	2/18		2,607.20	501.00						
Delegation expenses			Brussels						3,367.37		3,367.37
			Paris						3,214.68		3,214.68
Subtotal, military transportation							106,529.99				
Subtotal, commercial transportation							2,178.78				
Grand total					6,921.00		108,708.77		6,582.05		122,336.90

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military transportation.
[4] Commercial transportation.

CHARLES ROSE, May 13, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO CANADA-UNITED STATES INTERPARLIAMENTARY CONFERENCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN FEB. 27 AND MAR 3, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Michael Barnes	3/1	3/3	United States		403.29		[3] 430.00				1,225.63
							[4] 392.34				
Dante B. Fascell	2/27	3/3	United States		673.54		[4] 784.68				1,458.22
Bill Frenzel	2/27	3/2	United States		466.80		[4] 392.34				859.14
Sam Gibbons	2/27	3/3	United States		650.67		[3] 560.00				1,603.01
							[4] 392.34				
Lee Hamilton	2/27	3/3	United States		692.42		[4] 784.68				1,477.10
Jim Kolbe	2/27	3/2	United States		453.48		[4] 392.34				845.82
David Martin	2/27	3/3	United States		656.56		[4] 784.68				1,441.24
James Oberstar	2/27	3/3	United States		632.48		[4] 784.68				1,417.16
Bill Richardson	2/27	3/3	United States		683.04		[4] 784.68				1,467.72
Arlan Stangeland	2/27	3/3	United States		610.94		[4] 784.68				1,395.62
Bob Traxler	2/27	3/3	United States		620.20		[4] 784.68				1,404.88
Morris K. Udall	2/27	3/3	United States		745.81		[4] 784.68				1,530.49
James Weaver	2/27	3/3	United States		618.29		[4] 784.68				1,402.97
Nancy Agris	2/27	3/3	United States		627.28		[4] 784.68				1,411.96
Everett Bierman	2/27	3/3	United States		678.14		[4] 784.68				1,462.82
Elizabeth Daoust	2/25	3/3	United States		1,054.70		[3] 189.00				1,636.04
							[4] 392.34				
George Ingram	2/27	3/3	United States		620.83		[4] 784.68				1,405.51
	8/17	8/19	United States		328.23		[3] 365.00		106.36		799.59
Robert Kurz	2/27	3/3	United States		724.21		[4] 784.68				1,508.89
Steve Nelson	2/27	3/3	United States		627.80		[4] 784.68				1,412.48
Michael VanDusen	2/27	3/3	United States		624.24		[4] 784.68				1,408.92
Delegation expenses:											
Official delegation functions									20,264.44		
Inflight expenses									404.05		
Ground transportation									2,251.05		
Supplies									767.00		23,686.54
Committee total					13,192.95		[3] 1,544.00		23,792.90		52,261.75
							[4] 13,731.90				

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Commercial transportation.
[4] DOD transportation.

SAM GEJDENSON, Mar. 18, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INTERPARLIAMENTARY UNION CONFERENCE, MEXICO CITY, MEXICO, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 3 AND APR. 12, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Representative Louis Stokes	4/4	4/12	Mexico		935.13		149.74				1,084.87
							[3] 581.25				581.25
Marty Sletzinger	4/3	4/12	Mexico		886.20		378.00				1,264.20
							[3] 581.25				581.25
Ellen Rayner	4/5	4/12	Mexico		733.35		[3] 1,278.75				2,012.10
Julie Illsley	4/5	4/12	Mexico		527.28		[3] 1,278.75				1,806.03

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INTERPARLIAMENTARY UNION CONFERENCE, MEXICO CITY, MEXICO, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 3 AND APR. 12, 1986—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Delegation expenses:											
Official meals	4/3	4/12	Mexico		1,219.47						1,219.47
Control room	4/3	4/12	Mexico		816.36						816.36
Transportation							1,029.41				1,029.41
Miscellaneous									64.27		64.27
Committee total					5,117.79		5,277.15		64.27		10,459.21

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] DOD transportation provided pursuant to 31 U.S.C. 22A.

CLAUDE PEPPER.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO BRITISH-AMERICAN PARLIAMENTARY GROUP, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 17 AND APR. 20, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Charles Rose	4/17	4/20	Bermuda		528		1,908				2,436
Thomas S. Foley	4/17	4/20	Bermuda		528		1,908				2,436
Berkley Bedell	4/17	4/20	Bermuda		528		1,908				2,436
Wyche Fowler	4/17	4/20	Bermuda		528		1,908				2,436
Webb Franklin	4/17	4/20	Bermuda		528		1,908				2,436
Sala Burton	4/17	4/20	Bermuda		528		1,908				2,436
Lawrence J. Smith	4/17	4/20	Bermuda		528		1,908				2,436
John Spratt	4/17	4/20	Bermuda		528		1,908				2,436
Bart Gordon	4/17	4/20	Bermuda		528		1,908				2,436
Don Sundquist	4/17	4/20	Bermuda		528		1,908				2,436
Peter Abbruzzese	4/17	4/20	Bermuda		528		1,908				2,436
Spencer Oliver	4/17	4/20	Bermuda		528		1,908				2,436
Arlene Atwater	4/17	4/20	Bermuda		528		1,908				2,436
Jane Fonvielle	4/17	4/20	Bermuda		528		1,908				2,436
Judith Lemons	4/17	4/20	Bermuda		528		1,908				2,436
Control room									599.20		599.20
Committee total					7,920		28,620		599.20		37,139.20

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

CHARLES ROSE, May 16, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THE NORTH ATLANTIC ASSEMBLY, LUXEMBOURG, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAY 22 AND MAY 26, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Frank Annunzio	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Sherwood L. Boehlert	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Jack Brooks	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Sala Burton	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Norman D. Dicks	5/22	5/26	Luxembourg	25,740	572.00		1,965.82		482.16		3,019.98
Don Fuqua	5/22	5/26	Luxembourg	25,740	572.00		1,965.82		482.16		3,019,98
Robert Garcia	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Bart Gordon	5/22	5/26	Luxembourg	25,740	572.00		1,965.82		482.16		3,019.98
Frank Horton	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Mary Rose Oakar	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Charles Rose	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Patricia Schroeder	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Peter Abbruzzese	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Arlene Atwater	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Jack Brady	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.16		5,370.41
Jennifer Grant-Fohl	5/22	5/26	Luxembourg	25,740	572.00		4,316.26		482.16		5,370.42
Billie Gay Larsen	5/22	5/26	Luxembourg	25,740	572.00		4,316.26		482.17		5,370.43
Ron Lasch	5/22	5/26	Luxembourg	25,740	572.00		4,316.26		482.17		5,370.43
Spencer Oliver	5/22	5/26	Luxembourg	12,870	286.00		1,965.81		246.96		2,498.77
Curt Prins	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.17		5,370.42
Arch Roberts	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.17		5,370.42
Dara Schlieker	5/22	5/26	Luxembourg	25,740	572.00		4,316.25		482.17		5,370.42
Committee total					12,298.00		85,555.30		10,372.37		108,226.17

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

Note.—"Transportation" reflects expenditures for military transportation expenses. "Other purposes" reflects expenditures for local transportation, control room, and Embassy personnel overtime and per diem expenses.

CHARLES ROSE, June 2, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INTERPARLIAMENTARY CONFERENCE ON EUROPEAN COOPERATION AND SECURITY, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAY 24 AND JUNE 2, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Vance Hyndman	5/24	6/2	West Germany		1,144.00		1,280.00				2,424.00
Committee total					1,144.00		1,280.00				2,424.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

CLAUDE PEPPER.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAY 29 AND JUNE 2, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Ronald Coleman	5/28	5/31	United States		518.26		[3] 332.00				850.26
E de la Garza	5/28	6/2	United States		1,437.36		[3] 189.00				2,015.63
Tom DeLay	5/29	6/2	United States		504.00		[4] 528.24				1,279.24
							[3] 247.00				
David Dreier	5/29	5/31	United States		259.73		[3] 220.00				479.73
Benjamin Gilman	5/29	6/1	United States		353.90		[4] 528.24				882.14
William F. Goodling	5/29	5/31	United States		241.20		[4] 528.24				954.44
							[3] 185.00				
Jim Kolbe	5/29	5/30	United States		115.00		[3] 178.00				293.00
Robert J. Lagomarsino	5/29	5/30	United States		253.17		[4]917.51				1,170.68
	6/1	6/2									
George Miller	5/30	5/31	United States		116.00		[3] 634.00				750.00
Charles B. Rangel	5/29	5/31	United States		246.29		[4] 528.24				1,329.53
							[3] 555.00				
Gus Yatron	5/29	6/2	United States		1,123.25		[4] 917.51				2,040.76
Elliott Brown	5/29	6/2	United States		460.00		460.00		[4]917.51		1,377.51
Mario Castillo	5/29	6/2	United States		460.00		[4] 917.51				1,412.26
J.C. Chester	4/22	4/25	United States		491.62		[3] 274.00				765.62
	5/29	6/2	United States		478.35		[4] 917.51				1,395.86
John Cusack	5/29	6/2	United States		474.30		[4] 917.51				1,391.81
Elizabeth Daoust	4/22	4/25	United States		508.69		[3] 274.00				782.69
	5/27	6/2	United States		818.05		[3] 370.00				1,577.32
							[4] 389.27				
Jim Davis	5/29	6/2	United States		617.10		[4] 917.51				1,534.61
Shelly Livingston	4/22	4/25	United States		461.99		[3] 274.00				735.99
	5/27	6/2	United States		744.51		[3] 370.00				1,503.78
							[4] 389.27				
Mark Tavlarides	5/29	6/2	United States		521.19		[4] 917.51				1,438.70
Hillel Weinberg	5/29	6/2	United States		499.62		[4] 389.27				888.89
Delegation expenses:											
Official delegation functions									22,354.18		
Interpreting and translations services									5,190.16		
Transcripts									1,161.98		
Supplies									1,109.70		
Inflight expenses and ground transport									638.36		30,454.38
Committee total					11,738.33		[3] 4,102.00				
							[4] 11,010.12		30,454.38		57,304.83

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

E de la GARZA, Chairman, Mar. 10, 1987.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INTERPARLIAMENTARY CONFERENCE, BUENOS AIRES, ARGENTINA, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 2 AND OCT. 6, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Rep. Jim Moody	10/2	10/6	Argentina		586.88		3,516.00				4,102.88
Marty Sletzinger	10/2	10/6	Argentina		465.69		3,603.00				4,068.69
Delegation expenses:											
Transportation	10/2	10/6					80.12				80.12
Miscellaneous	10/2	10/6							76.55		76.55
Committee total					1,052.57		7,199.12		76.55		8,328.24

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

CLAUDE PEPPER.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2118. A letter from the Acting Secretary of Commerce, transmitting a copy of the annual executive branch assessment of the economic condition of the automobile industry, "The U.S. Automobile Industry, 1985," pursuant to 15 U.S.C. 1871; to the Committee on Banking, Finance and Urban Affairs.

2119. A letter from the Secretary of Education, transmitting a draft of proposed legislation to improve the administration and enhance the utility of the national assessment of educational progress; to the Committee on Education and Labor.

2120. A letter from the National Commander, American Ex-Prisoners of War, transmitting a copy of the 1987 audit report as of June 30, 1987, pursuant to 36 U.S.C. 2111; to the Committee on the Judiciary.

2121. A letter from the Inspector General, Department of Health and Human Services, transmitting a copy of a report entitled "Social Security Client Satisfaction," to determine what effects, if any, staff reductions at the Social Security Administration were having on the quality of services to the public; to the Committee on Ways and Means.

2122. A letter from the Secretary of Energy, transmitting a copy of the Department's report on the activities and progress of the compact regions and nonmember States in 1986 leading to the development of new low-level waste disposal facilities, pursuant to 42 U.S.C. 2021g(b); jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

2123. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to repeal health maintenance organization authorities; jointly, to the Committees on Energy and Commerce and Ways and Means.

2124. A letter from the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs, Department of Justice, transmitting, a report on the status of alleged and actual violations of the Foreign Agents Registration Act by representatives of governments or opposition movements in sub-Saharan Africa, pursuant to 22 U.S.C. 5101; jointly, to the Committees on the Judiciary and Foreign Affairs.

2125. A letter from the Secretary of the Treasury, transmitting, notification that with the expiration of the temporary public debt limit at midnight on September 23, the Secretary will be unable to invest or roll over maturing investments of trust funds and other Government accounts, including the civil service retirement and disability fund and the thrift savings fund of the Federal employees' retirement system, pursuant to 5 U.S.C. 8348(1)(2); 5 U.S.C. 8348(i)(2); jointly, to the Committees on Ways and Means and Post Office and Civil Service.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2035. A bill to increase the amount authorized to be appropriated for property acquisition, restoration, and development, and for transportation, educational, and cultural programs, relating to the Lowell National Historical Park; to continue the term of a member of the Lowell Historic Preservation Commission pending the appointment of a successor; to adjust a quorum of the Commission in the event of a vacancy; and to delay the termination of the Commission; with amendments (Rept. 100-303). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2566. A bill to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes (Rept. 100-304). Referred to the Committee of the Whole House on the State of the Union.

Mr. DELLUMS: Committee on the District of Columbia. H.R. 51. A bill to provide for the admission of the State of New Columbia into the Union; with an amendment (Rept. 100-305). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 362. Joint resolution making continuing appropriations for the fiscal year 1988, and for other purposes (Rept. 100-306). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONIOR: Committee on Rules. House Resolution 265. Resolution providing for the consideration of H.R. 3030, a bill to provide credit assistance to farmers, to strengthen the Farm Credit System, and for other purposes (Rept. 100-307). Referred to the House Calendar.

Mr. MONTGOMERY: Committee on Veterans' Affairs. Report on Section 302(b) of the Congressional Budget Act of 1974 (Rept. 100-308). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BURTON of Indiana (for himself, Mr. HYDE, Mr. COURTER, Mr. GINGRICH, Mr. ARMEY, Mr. DAVIS of Illinois, Mr. YOUNG of Alaska, Mr. DORNAN of California, Mr. SWINDALL, Mr. BALLENGER, Mr. DELAY, Mr. DANNEMEYER, Mr. BLILEY, Mr. CRAIG, Mr. LUNGREN, Mr. PACKARD, Mrs. SAIKI, Mr. MCCANDLESS, Mr. KYL, Mr. COMBEST, Mr. THOMAS of California, Mr. OXLEY, Mr. NIELSON of Utah, Mr. HEFLEY, Mr. HUNTER, Mr. DANIEL, Mr. STRATTON, Mr. CRANE, Mr. BUNNING, Mr. FIELDS, Mr. WEBER, Mr. MACK, and Mr. KASICH):

H.R. 3296. A bill to provide for military assistance for the Nicaraguan democratic resistance after November 7, 1987, if the Government of Nicaragua has not completely complied with the requirements of the agreement signed in Guatemala on August 7, 1987; to the Committee on Foreign Affairs.

By Mr. DAVIS of Michigan:

H.R. 3297. A bill to amend the Merchant Marine Act, 1936, to establish a new system of operating differential subsidy contracts for vessels in liner service, and for other purposes; to the Committee on Merchant Marine and Fisheries.

H.R. 3298. A bill to provide for central recordation of recreational vessel mortgages; to the Committee on Merchant Marine and Fisheries.

H.R. 3299. A bill to establish within the Department of Transportation a new Federal Maritime Administration, to consolidate within that Administration certain functions of the Federal Government relating to maritime transportation, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mrs. BOXER (for herself, Mr. BERMAN, Mr. DELLUMS, Ms. PELOSI, Ms. KAPTUR, Mr. LELAND, Mr. SAVAGE, Mr. FAUNTROY, Mr. STOKES, Mr. BLAZ, Mr. CONYERS, Mr. HOWARD, Mr. NEAL, Mr. SWIFT, Mr. DYMALLY, Mr. ST GERMAIN, Mr. AKAKA, Mr. MRAZEK, Mr. SOLARZ, Mr. TOWNS, Mr. OWENS of New York, Mr. DYSON, and Mr. CROCKETT):

H.R. 3300. A bill to direct the Director of the Office of Technology Assessment to prepare a report regarding hazardous waste reduction and management; to direct the Administrator of the Environmental Protection Agency to prepare a hazardous waste reduction and management plan; and for other purposes; jointly, the the Committees on Energy and Commerce; Merchant Marine and Fisheries; Public Works and Transportation; and Science, Space, and Technology.

By Mr. DORNAN of California:

H.R. 3301. A bill to amend the Federal Food, Drug, and Cosmetic Act to require that the labeling of drugs which are derived from materials from a human fetus shall include notice of the source of such materials and the labeling shall be made available to the consumer and the parent or guardian of the consumer; to the Committee on Energy and Commerce.

By Mr. HALL of Texas:

H.R. 3302. A bill to clarify the exemptive authority of the Securities and Exchange Commission; to the Committee on Energy and Commerce.

By Mr. HAMMERSCHMIDT:

H.R. 3303. A bill to amend the National Trails System Act to designate the Trail of Tears as a national historic trail; to the Committee on Interior and Insular Affairs.

By Mr. HENRY (for himself, Mr. DANIEL, Mr. MACKAY, Mr. HOWARD, Mr. LAGOMARSINO, Mr. FAWELL, Mr. LEWIS of Florida, Mr. GRANT, Mr. DANNEMEYER, Mr. UPTON, Mr. FLORIO, Mr. SHUMWAY, and Mr. BATEMAN).

H.R. 3304. A bill to provide that the exception from the hospital insurance tax for service performed by an election official or election worker shall apply where renumeration for such service is less than $500 in a calendar year; to the Committee on Ways and Means.

By Mr. MICA:

H.R. 3305. A bill to amend title 38 of the United States Code to require the Administrator of Veterans' Administration to consider the number of veterans residing in each State, and the projected changes in the number of veterans residing in each State, in acquiring and operating medical facilities; to the Committee on Veterans' Affairs.

By Miss SCHNEIDER:

H.R. 3306. A bill to extend the temporary suspension of duty on a certain chemical; to the Committee on Ways and Means.

By Mr. SYNAR:

H.R. 3307. A bill to provide for an orderly transition to the taking effect of the initial set of sentencing guidelines prescribed for criminal cases under section 994 of title 28, United States Code, and for other purposes; to the Committee on the Judiciary.

By Mr. WHITTEN:

H.J. Res. 362. Joint resolution making continuing appropriations for the fiscal year 1988, and for other purposes.

By Mr. GONZALEZ (for himself, Mr. ST GERMAIN, Mr. WYLIE, and Mrs. ROUKEMA):

H.J. Res. 363. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. KLECZKA (for himself, Mr. FRANK, and Mr. FRENZEL):

H.J. Res. 364. Joint resolution proposing an amendment to the Constitution of the United States to permit Congress to grant power to bodies in the judicial branch to remove judges for cause; to the Committee on the Judiciary.

By Mr. CRAIG (for himself and Mr. CARPER):

H. Res. 266. Resolution providing for the consideration of the joint resolution (H.J. Res. 321) proposing an amendment to the Constitution to provide for a balanced budget for the U.S. Government and for greater accountability in the enactment of tax legislation; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

201. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the aviation trust fund; to the Committee on Public Works and Transportation.

202. Also, memorial of the Legislature of the State of California, relative to the Elk Hills Naval Petroleum Reserve; jointly, to the Committees on Armed Services and Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 32: Mr. DORNAN of California.

H.R. 372: Mr. JEFFORDS.

H.R. 384: Mr. DICKS.

H.R. 387: Ms. PELOSI.

H.R. 388: Mr. ALEXANDER, Mr. DEWINE, Mr. SHAW, and Mr. SMITH of New Jersey.

H.R. 458: Mr. BOULTER and Ms. PELOSI.

H.R. 671: Mr. FORD of Tennessee.

H.R. 792: Ms. PELOSI.

H.R. 817: Mr. BLILEY, Mr. BROWN of California, Mr. RHODES, Mr. HOWARD, Mr. GRANT, Mr. COBLE, and Mr. SKEEN.

H.R. 938: Mr. BLILEY.

H.R. 940: Mr. BROWN of California, Mr. BUSTAMANTE, Mr. LAGOMARSINO, Mr. OWENS of Utah, Mr. BONKER, Mr. MFUME, Mr. LEHMAN of Florida, Mr. GRAY of Illinois, Mr. HUTTO, Mr. EDWARDS of California, Ms. PELOSI, and Mr. JOHNSON of South Dakota.

H.R. 955: Mr. DANNEMEYER and Mr. BUECHNER.

H.R. 957: Mr. GILMAN and Mr. RINALDO.

H.R. 1076: Mr. FISH, Mr. GILMAN, Mr. MARINEZ, and Mr. LEWIS of Georgia.

H.R. 1244: Mr. LOWRY of Washington and Mr. MORRISON of Washington.

H.R. 1428: Mr. LAGOMARSINO.

H.R. 1516: Mr. TAUKE, Mr. SMITH of New Jersey, Mr. DEWINE.

H.R. 1583: Mr. CHANDLER.

H.R. 1729: Mr. ORTIZ, Mr. HILER, Mr. STALLINGS, Mr. KILDEE, Mr. QUILLEN, and Mr. HENRY.

H.R. 1734: Mr. DICKS and Mr. LOWRY of Washington.

H.R. 1808: Mr. GEJDENSON and Mr. DAUB.

H.R. 2113: Mr. DONALD E. LUKENS and Mr. HANSEN.

H.R. 2116: Ms. KAPTUR and Mr. DONALD E. LUKENS.

H.R. 2248: Mr. BALLENGER, Mr. DELAY, Mr. GREGG, Mr. REGULA, Mr. SUNIA, and Mr. JEFFORDS.

H.R. 2270: Mr. STAGGERS.

H.R. 2328: Mr. PENNY.

H.R. 2417: Mr. RICHARDSON.

H.R. 2500: Mr. LEVIN of Michigan.

H.R. 2532: Mr. LELAND and Mr. CALLAHAN.

H.R. 2587: Mr. FIELDS, Mr. BOULTER, Mr. BUNNING, Mr. YATES, Mr. HALL of Texas, Mrs. SAIKI, and Mr. AUCOIN.

H.R. 2609: Mr. PEASE, Mrs. BOXER, and Mr. FOGLIETTA.

H.R. 2611: Mr. SOLOMON, Mr. KOLBE, Mr. WYLIE, Mr. HAMMERSCHMIDT, Mr. IRELAND, Mr. NELSON of Florida, Mr. GINGRICH, Mr. CARPER, and Mr. MICA.

H.R. 2669: Mr. SLAUGHTER of Virginia and Mr. SAXTON.

H.R. 2725: Mr. OWENS of Utah, Mr. ROGERS, and Mr. EMERSON.

H.R. 2727: Mr. DEFAZIO, Mr. WEISS, and Mr. FOGLIETTA.

H.R. 2773: Ms. PELOSI, Mr. OWENS of Utah, Mr. ATKINS, Mr. LEVIN of Michigan, and Mr. LEVINE of California.

H.R. 2774: Ms. PELOSI, Mr. OWENS of Utah, Mr. ATKINS, Mr. LEVIN of Michigan, and Mr. LEVINE of California.

H.R. 2833: Mr. HYDE and Mr. SHUMWAY.

H.R. 2866: Mr. HOCHBRUECKNER.

H.R. 2908: Mr. CAMPBELL.

H.R. 2920: Mr. COELHO and Mr. ENGLISH.

H.R. 2928: Mr. NEAL and Mr. BUNNING.

H.R. 2934: Ms. SNOWE and Mr. BILIRAKIS.

H.R. 3069: Mrs. JOHNSON of Connecticut and Mrs. SMITH of Nebraska.

H.R. 3129: Mr. FRENZEL, Mr. NELSON of Florida, Mr. STENHOLM, Mr. HANSEN, Mr. MCEWEN, Mr. DAUB, Mr. DANIEL, Mr. DELAY, and Mr. SHUMWAY.

H.R. 3132: Mr. FRANK, Mr. DYMALLY, Mr. PEPPER, Mr. FAUNTROY, Mr. LELAND, and Mr. MCCLOSKEY.

H.R. 3175: Mr. OWENS of Utah.

H.R. 3176: Mr. OWENS of Utah.

H.R. 3180: Mr. DAUB and Mr. DELAY.

H.J. Res. 199: Mr. KOSTMAYER, Mr. SAVAGE, Mr. APPLEGATE, Mr. LANTOS, Mr. FAZIO, Mr. HOYER, Mr. BONIOR of Michigan, Mr. KENNEDY, Mr. FISH, Mr. PANETTA, Ms. PELOSI, Mr. CROCKETT, and Mr. MATSUI.

H.J. Res. 240: Mr. OBERSTAR, Mr. ASPIN, Mr. BIAGGI, Mr. VENTO, Mr. CROCKETT, and Mr. CAMPBELL.

H.J. Res. 274: Mr. ATKINS, Mr. BILBRAY, Mr. BOSCO, Mr. BROWN of California, Mr. BRYANT, Mr. COBLE, Mr. DREIER of California, Mr. FAWELL, Mr. FISH, Mr. FOGLIETTA, Mr. GEKAS, Mr. GRANDY, Mr. GUNDERSON, Mr. HASTERT, Mr. HOCHBRUECKNER, Mr. KOLBE, Mr. LENT, Mr. LEVIN of Michigan, Mr. THOMAS A. LUKEN, Mr. MCCLOSKEY, Mr. MCMILLEN of Maryland, Mr. MANTON, Mrs. MEYERS of Kansas, Mr. PARRIS, Mrs. PATTERSON, Mr. RANGEL, Mr. RICHARDSON, Mr. ROBERTS, Mr. ROSE, Mr. SABO, Mr. SCHUETTE, Ms. SLAUGHTER of New York, Mr. TAYLOR, Mr. TORRICELLI, Mr. VENTO, Mr. VOLKMER, Mr. WALGREN, Mr. WOLPE, and Mr. YOUNG of Florida.

H.J. Res. 314: Mr. FISH, Mr. MORRISON of Connecticut, Mr. OWENS of Utah, and Mr. RINALDO.

H.J. Res. 328: Mr. LUNGREN.

H.J. Res 349: Mr. EDWARDS of California, Mrs. BOXER, Mr. HALL of Ohio, Mr. PANETTA, Mr. DAUB, Mr. BROWN of California, Mr. BADHAM, Ms. KAPTUR, Mr. NEAL, Mr. DEFAZIO, Mr. OBERSTAR, Mr. PEASE, Mr. MARTINEZ, and Mr. FAZIO.

H.J. 355: Mr. VOLKMER, Mr. NICHOLS, Mr. YATRON, Mr. MCEWEN, Mr. SUNDQUIST, Mr. DURBIN, Mr. HOCHBRUECKNER, Mr. HASTERT, Mr. MILLER of Ohio, Mr. EARLY, Mr. FISH, Mr. PURSELL, Mr. DANIEL, Mr. PARRIS, Mr. FIELDS, Mr. DENNY SMITH, Mr. DANNEMEYER, Mr. MOAKLEY, Mr. FRANK, Mr. COELHO, Mr. WYDEN, Mr. SHAW, Mr. GUNDERSON, Mr. MOLINARI, Mr. VISCLOSKY, Mr. STARK, Mrs. BOXER, Mr. CHENEY, Mr. HOYER, Mr. CARR, Mr. LIPINSKI, and Mr. SUNIA.

H. Con. Res. 108: Mr. HUBBARD, Mr. MONTGOMERY, Mr. UPTON, Mr. DONALD E. LUKENS, and Ms. KAPTUR.

H. Con. Res. 126: Mr. HYDE.

H. Con. Res. 148: Mrs. MEYERS of Kansas and Mr. LIGHTFOOT.

H. Res. 62: Mr. CARDIN, Mr. VANDER JAGT, Mr. SABO, Mr. BONIOR of Michigan, Mr. DAVIS of Michigan, and Mr. HOWARD.

H. Res. 131: Mr. EVANS, Mr. KILDEE, Ms. KAPTUR, Mr. LELAND, Mr. WHEAT, and Mr. GRAY of Pennsylvania.

H. Res. 144: Mr. RANGEL.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 162

By Mrs. BYRON:

—Page 29, strike out line 4 and insert the following (and indent lines 5 through 13 accordingly):

(b) DISCRIMINATION PROHIBITED.—

(1) No employer or

Page 29, after line 13, insert the following:

(2) An employer with 15 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority, and other employment rights and benefits as comparable as practicable to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

Page 32, after line 2, insert the following:

(5) An employer is not required to provide medical removal protection for employees if the employer—

(A) has 15 or fewer full-time employees at the time medical removal protection is requested, and

(B) has made or is in the process of making a reasonable good faith effort to eliminate the occupational health hazard that is the basis for the medical removal decision.